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**Via ECF**

May 8, 2024

Honorable Rukhsanah L. Singh, U.S. Magistrate Judge  
United States District Court- District of NJ  
Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street, Court Room 7W  
Trenton, NJ 08608

**Re: In re: Johnson & Johnson Talcum Powder Products  
Marketing, Sales Practices and Products Liability Litigation -  
MDL 2738**

Dear Magistrate Judge Singh:

I write on behalf of the Johnson & Johnson Defendants to provide a copy of the transcript of the May 3, 2024, continued plenary hearing regarding disqualification of Beasley Allen. This is the transcript produced by the court reporter retained jointly by the parties. The official transcript prepared through the audio recording in the court room is not yet available.

Thank you for your consideration of these matters.

Respectfully,

/s/ Susan M. Sharko

Susan M. Sharko

**FAEGRE DRINKER BIDDLE & REATH LLP**

SMS/scg

Encl: (1)

Cc: All counsel of record (via ECF)

Page 1

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ATLANTIC COUNTY  
Docket No. ATL-L-2648-15

IN RE: TALC-BASED POWDER : CIVIL ACTION  
PRODUCTS LITIGATION : CASE NO. 300

- - -  
TRANSCRIPT OF PLENARY HEARING  
(VOLUME III)  
- - -

PLACE: ATLANTIC COUNTY CIVIL COURTHOUSE  
1201 BACHARACH BOULEVARD  
ATLANTIC CITY, NEW JERSEY  
DATE: MAY 3, 2024  
BEFORE: THE HONORABLE JOHN C. PORTO, P.J.Cv.  
THE HONORABLE RUKHSANAH L. SINGH  
U.S. DISTRICT COURT MAGISTRATE

- - -  
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World Wide Vice President, Litigation

EXAMINATION

WITNESS: ANDY BIRCHFIELD

PAGE

Cross ..... 22

Redirect ..... 86

Recross ..... 138

Further Redirect ..... 147

E X H I B I T S

| NUMBER | DESCRIPTION        | ID  | EVD |
|--------|--------------------|-----|-----|
| J&J 1A | Transcript Excerpt | 147 |     |
| J&J 1B | Transcript Excerpt | 147 |     |

1 (Hearing commenced at 9:38 a.m.)

2 THE COURT: Thank you. Good morning,  
3 everyone. Please be seated. Very nice to see  
4 everyone.

5 This is In Re: Talc, In Re: Johnson &  
6 Johnson Talc-Based Products Litigation, Docket No.  
7 ATL-L-2648-15, and MDL Case 2738, MCL Case 300.

8 May I have the appearance of counsel.  
9 We'll start with Mr. Pollock.

10 MR. POLLOCK: Good morning, Your  
11 Honor. How are you?

12 THE COURT: Fine, thank you. Good to  
13 see you.

14 MR. POLLOCK: I'm here on behalf of  
15 Mr. Birchfield and the Beasley Allen law firm, and  
16 I'm joined with my associate, Austin Hilton.

17 MR. BRODY: Thank you. Good morning,  
18 everyone.

19 And Mr. Brody.

20 MR. BRODY: Good morning, Your Honor.  
21 Steve Brody from O'Melveny & Myers for Johnson &  
22 Johnson and LLT Management LLC.

23 THE COURT: Thank you. Good morning  
24 to you.

25 Mr. Haas.

1 MR. HAAS: Good morning, Your Honors.  
2 Erik Haas on behalf of Johnson & Johnson.

3 THE COURT: Thank you. Good morning  
4 to you.

5 We've been together so many times.  
6 We have a continuation of your client's testimony,  
7 Mr. Pollock. We've got the correspondence. We've  
8 got the attorney's eyes only material. And anything  
9 to address before we go forward with the testimony?

10 MR. POLLOCK: I think there's two  
11 preliminary matters, and I -- you know, the Courts,  
12 Courts -- the Courts can run this any way they want.  
13 One is the admission of P-5.

14 P-5 was the document that was the  
15 response from Mr. Conlan. The issue that -- we  
16 tried to work it out as counsel. We could not.  
17 Opposing counsel is objecting to the statement by  
18 Mr. Conlan, he did not recommend. There was  
19 testimony on this point. I submitted the  
20 correspondence. At some point, we need to address  
21 that issue. It doesn't need to be addressed now.  
22 If you want to, we can, but it's completely up to  
23 you and to my opposing counsel.

24 The second one is the belated  
25 submission of timesheets in a redacted format. And

1 I have -- I don't know whether you want to hear oral  
2 argument on this now, or do you want formal  
3 submissions, but I object to it. I object to it  
4 because I asked for it prior to these hearings. I  
5 objected to it because Yuna says that you can  
6 produce it in camera, but it didn't say you can  
7 produce it in camera after three witnesses, three  
8 key witnesses have taken the stand and left; and, in  
9 particular, Mr. Conlan, who they are attacking.

10 If they had wanted -- they've had  
11 these documents. They prepared an Excel sheet. So,  
12 if you want me to, I can prepare a formal response,  
13 but I understand the Court didn't invite submission  
14 of these documents, and I read the transcript and  
15 I'm sure you know what you said.

16 But to me, this is completely  
17 violative of due process as far as Mr. Conlan's  
18 rights, and I don't represent him, but the fact is,  
19 by the implication, if you will, they're saying the  
20 two of us are hooked together.

21 So I would like to know, does the  
22 Court want oral argument right now? Does it want to  
23 have briefing later on? How would Your Honors like  
24 to proceed, because I do object to their admission.

25 THE COURT: Let's hear from Mr. Brody

1 first. And then what we can do is -- I'm not so  
2 sure about oral arguments now. Maybe let's start  
3 with the testimony. Judge Singh and I will confer,  
4 after we hear from counsel, and then we will render  
5 our thoughts and decision on that issue. Okay?

6 Mr. Brody.

7 MR. BRODY: Certainly, Your Honor.  
8 And as Your Honors are aware, after the lunch break  
9 on April 10th, the Court indicated that Johnson &  
10 Johnson would be entitled to make an in camera  
11 attorneys' eyes only submission with redactions  
12 where we felt redactions needed to be made in order  
13 to maintain privilege, really as impeachment of  
14 instances where Mr. Conlan testified to things that  
15 are flatly contradicted by the record of what he did  
16 as J&J's counsel, J&J's outside counsel on the talc  
17 litigation on these very matters over the course of  
18 20 months where he represented the company. And so  
19 that's what we did.

20 I think that -- I don't think there's  
21 an objection to the submission of impeachment  
22 evidence that would be proper. I do think that if  
23 Mr. Pollock wants to, in the briefing that Your  
24 Honors have indicated that you wish to receive from  
25 the parties after the conclusion of this hearing, if



1 he wants to argue as to how that should or should  
2 not be considered by the Court, and the weight that  
3 it should be given as impeachment, he is certainly  
4 entitled to do that, and the briefing will give him  
5 the opportunity to do that, and the Court then will  
6 have an opportunity to decide how, based on  
7 briefing, it wants to consider those materials and  
8 the extent to which it believes those materials are  
9 material to its evaluation of Mr. Conlan's  
10 credibility and his testimony overall.

11 THE COURT: Well, our record is not  
12 closed, and there's not been any decision on closing  
13 the record. So, you know, keeping in mind we also  
14 have a confrontation issue, right, with regard to  
15 certain material, and it's -- I'm going to suggest  
16 to you that Judge Singh and I, perhaps, anticipated  
17 this argument, that maybe there's another way to  
18 address this, Mr. Brody and Mr. Pollock.

19 So let's start with the testimony.  
20 Judge Singh and I will confer, and we'll address  
21 counsel. All right?

22 MR. POLLOCK: Thank you.

23 MR. BRODY: Understood.

24 THE COURT: With the testimony today  
25 of Mr. Birchfield, can you give us at least an

1 understanding or a heads-up with regard to time  
2 frame? This is a continuation, candidly, of  
3 Mr. Birchfield's testimony. Are we going to be all  
4 day?

5 MR. BRODY: No, I don't think we're  
6 going to be all day. And I was looking back at the  
7 transcript from April 10th and I saw that I told the  
8 Court at 4:30 p.m. that day that I thought I had 30  
9 minutes left. It might be 40. But I'm going to try  
10 to hold close to what I said on the 10th.

11 THE COURT: It just gives us an idea  
12 of about where our day is. Okay.

13 MR. BRODY: Obviously, how long we're  
14 here then will depend on what Mr. Pollock raises  
15 with Mr. Birchfield and any redirect that I may  
16 have.

17 THE COURT: Thank you, Mr. Brody.

18 Mr. Pollock, any thoughts? We don't  
19 have a time -- you know, we don't have a stop watch  
20 on everybody. Just to give us an idea.

21 MR. POLLOCK: I acknowledge the fact  
22 that I respect both judges have been patient and  
23 you've committed the time to this hearing. I do  
24 thank you for that. I understand we also want to  
25 get this job done, and I respect that, too.

1                   It did not miss me that yesterday  
2           Mr. Haas went out on national press on the news and  
3           attacked Mr. Birchfield and his firm on the same  
4           vein he's attacking him here today; that this is  
5           self-interest, that this is just a big pay day for  
6           Beasley Allen, et cetera.

7                   I'm also very mindful that with  
8           regard to the -- one of the things they are directly  
9           attacking is whether Beasley Allen should maintain  
10          its position on the talc claimants committee and  
11          should it be involved in the future.

12                  I have to take this job seriously,  
13          because I respect and I know the Beasley Allen firm  
14          is committed to what it is doing. I have to allay  
15          any concerns you have that that firm is not out  
16          there for a pay day. They are out there to protect  
17          their clients. Mr. Birchfield will explain that on  
18          the stand. And, respectfully, it takes whatever  
19          time it takes. I will do it as quickly as I can.

20                  But, obviously, we were very patient  
21          with Mr. Haas, who talked ad nauseam in narrative.  
22          And I, therefore, I don't want to waste your time,  
23          but I also -- I can't commit to a specific time  
24          frame. I will do it as quickly and efficiently as I  
25          can. But as you both understand, this is a very

1 serious matter for a firm that is completely  
2 committed to its clients, and I have to protect  
3 them.

4 THE COURT: This Court -- I didn't  
5 see any comments, and I will have Judge Singh  
6 address it, too. This Court has no position with  
7 regard to Mr. Birchfield or J&J. The decision here  
8 with regard to this decision is going to be based on  
9 the facts and the facts only. Whatever is going on  
10 in the litigation and whatever the comments are, pro  
11 or against any of the firms have no bearing,  
12 Mr. Pollock, Mr. Brody, on this Court's decision on  
13 this particular issue, or even going forward, should  
14 we have any substantive issues.

15 We have a trial coming up in  
16 September, although it's not with Beasley Allen.  
17 But under no circumstances have I heard or thought  
18 anything that would cause this Court to recuse  
19 itself or to issue an adverse decision related to  
20 either J&J or Beasley Allen.

21 MR. POLLOCK: Right. So, Judge, just  
22 to -- and look, you have both dealt with me for a  
23 long time now. I am pretty straight to the point.  
24 The real question is 1.6. You and I talked about  
25 that; was there a disclosure. There's been zero

1 evidence of a disclosure. None. There's been not  
2 even one proffer that there's a disclosure.

3 So my firm belief is the real reason  
4 that J&J is pursuing this nonsense is that they  
5 believe that they can attack in the news, in the  
6 press, every place in the world, and especially  
7 before a federal court, and perhaps in state court,  
8 they can attack the Beasley Allen firm and say this  
9 firm has got to go, it's a problem child, it  
10 shouldn't be here. And that is -- it is absolutely  
11 crystal clear to me that's what's going on.

12 So I do understand that's the  
13 decision you're making here today, Judge Porto.  
14 You're here to decide whether a motion to disqualify  
15 should be granted, but you're also both smart enough  
16 to know this case has a life. And the fact is,  
17 Mr. Murdica is out there beating the band trying to  
18 collect plaintiffs' lawyers so that Mr. Haas can get  
19 to his 70 or 75 percent of the people, which he  
20 announced in the national press yesterday. They are  
21 playing this whole process for time.

22 So I do agree that we are here on a  
23 very specific little matter and, frankly, shouldn't  
24 be here at all, in my humble view, but I also am  
25 quite aware that there's a broader spectrum. And

1 that's why I have to go into some detail with regard  
2 to the commitment the Beasley Allen firm has, the  
3 fact that it did not need any information,  
4 whatsoever, from Jim Conlan, because they knew far  
5 more than Jim Conlan would ever have known regarding  
6 any of these matters. I have to be able to develop  
7 that theme.

8 THE COURT: Okay. And Judge Singh?

9 JUDGE SINGH: No, I would like to  
10 comment. I do appreciate the concerns. It is  
11 patently evident that there are things going on  
12 between the parties in the media. That is not what  
13 is before the Court. I echo Judge Porto's comments  
14 in that regard.

15 What is before the Court is, at least  
16 in the MDL motion, the order, the request for the  
17 entry of an order to show cause as to the  
18 disqualification. We are here to hear the evidence.  
19 Although we are asking in terms of managing our  
20 expectations for today's time frame, I don't believe  
21 Judge Porto or I have any intent on limiting the  
22 testimony without actually hearing what will be  
23 presented on the front end as to what Mr. Birchfield  
24 intends to testify in response to your examination.

25 But I would like to take this

1 opportunity to again remind the parties that we are  
2 here to determine this particular issue, based off  
3 of the record presented, not only the declarations  
4 and certifications previously submitted, but also  
5 the hours of testimony that both Judge Porto and I  
6 have had the opportunity to hear.

7 So thank you, Judge Porto.

8 THE COURT: You're welcome.

9 MR. POLLOCK: Thank you.

10 MR. BRODY: And if I may briefly  
11 respond on behalf of Johnson & Johnson and Mr. Haas.

12 Mr. Haas -- and first of all, I think  
13 that the events of this week, frankly, are relevant  
14 to the disqualification issue that is before the  
15 Court, because they speak to the ongoing prejudice  
16 to Johnson & Johnson of having Beasley Allen and  
17 Mr. Birchfield and Ms. O'Dell both representing  
18 plaintiffs in the litigation, in the MDL, in the MCL  
19 on a going-forward basis as evidenced by the events  
20 this week, where Johnson & Johnson announced a  
21 proposed plan that would resolve these cases.

22 It was immediately criticized in the  
23 press by Mr. Birchfield and by Ms. O'Dell, by the  
24 Beasley Allen firm. I mean, within an hour or so of  
25 when it was announced. And Mr. Haas responded to

1 the statements that were made first by  
2 Mr. Birchfield.

3 And so it's -- but, as a whole, it's  
4 something that we will likely get into to a degree  
5 today because it is directly relevant to how the  
6 parties are positioned, where Beasley Allen and  
7 Mr. Birchfield are positioned with the benefit of  
8 their relationship that they have, as Judge  
9 Schneider referred to as a collaboration, with  
10 Mr. -- with Mr. Conlan over a long period of time,  
11 unbeknownst to Johnson & Johnson last year.

12 And it creates what is not just a 1.6  
13 issue, and I understand why Mr. Pollock repeatedly  
14 refers to this as a narrow 1.6 issue, but it's a 1.9  
15 issue, it's a Rule 5.3 issue, it's a Rule 8.4 issue.  
16 It is much broader than where Mr. Pollock wants to  
17 put it. But all of this, including the events of  
18 this week, are relevant to that question and to the  
19 Court's evaluation of what is the right answer going  
20 forward and what has to happen here.

21 MR. POLLOCK: May I respond, Your  
22 Honor?

23 THE COURT: Sure. But let's keep in  
24 mind that this Court, you know, we all live in the  
25 world, these Courts live in the real world. We



1 understand what's going on, and we can focus on what  
2 is at issue here. And I can assure you, whatever is  
3 out there is not going to affect this Court's  
4 decision with regard to the underlying issue of  
5 disqualification.

6 MR. POLLOCK: I understand, Your  
7 Honor. And I'm not arguing, I'm not quibbling at  
8 all. The only point I would make on that is what  
9 you say and how you say it is going to have  
10 ramifications and reverberations down the road,  
11 right, because the fact is these -- this transcript,  
12 these hearings, these discussions, I promise you  
13 Mr. Birchfield and his firm will be seeing it for  
14 years, and Mr. Haas and Mr. Brody or someone else  
15 will be using it as a lever for years to come. So  
16 how we articulate it is going to be important.

17 If you will, I would like to step  
18 back for one second. When we first talked, years  
19 ago, it was literally last year, we were talking  
20 about Trupos, we were talking about Yuna, O  
21 Builders, et cetera. And when you -- I spent, I  
22 don't know, 20 years, 15 years on the ethics  
23 committee and another 10 on the character and  
24 fitness committee. When someone is being attacked,  
25 where someone is being accused of an ethical

1 violation, it usually is referred to the ethics  
2 committee. That's what those people do. That's  
3 what I did for years.

4 And, typically, the person who is  
5 being accused or being challenged or being -- being  
6 attacked is told exactly what it is they're alleged  
7 to have done. They're told with precision, This is  
8 the five funds you should not have taken; this was  
9 the alcoholism and drug, which unfortunately is half  
10 the matters we deal with. It was a specific  
11 allegation of negligence and miscarriage, or  
12 something along those lines.

13 In this case, it has been a constant  
14 morphing. I had to -- with Mr. Brody's first oral  
15 argument before you, Judge Porto, was there is no  
16 ethical violation, no RPC on point that we can find.  
17 None.

18 Judge Singh, you asked the question  
19 pointedly: Do I need to find an RPC violation to  
20 disqualify? Answer from Mr. Brody: No.

21 He and I disagree vehemently on this  
22 point. And by the way, I think the Supreme Court of  
23 New Jersey is squarely in my corner on this one.  
24 Once you got rid of the appearance of impropriety,  
25 which they did in 1984, under the Pollock

1 Commission --

2 THE COURT: 1993?

3 MR. POLLOCK: I'm sorry. '93, I  
4 apologize.

5 Once they came out with that one, at  
6 that point, the reality is that we shouldn't be here  
7 because I understand you want to do a credibility  
8 determination. If that's what we're focused on,  
9 then the credibility can be determined by, Is Andy  
10 an honest guy? Is Andy's firm committed to his  
11 clients? You know, Why are they opposing the  
12 bankruptcy? If you want to, you can get into all of  
13 those issues.

14 But what Mr. Brody now is saying is  
15 let's just try all the issues right here. I'm ready  
16 to do it. If that's what we want to do, I'm ready  
17 to do it, and we will proceed. But I just think  
18 that what the Supreme -- the reason the Supreme  
19 Court said you should decide it on the papers,  
20 unless -- and you grabbed onto this, Judge Porto,  
21 and I'm not criticizing you, but you appropriately  
22 said: Hey, I got some issues. I want to look at  
23 credibility.

24 It's not supposed to be a free for  
25 all. Now I'm looking at RPC 1.6, sharing of

1 confidential information. Somehow I'm now looking  
2 at 1.9 and 1.10. I've got other rules I haven't  
3 even looked at yet that Mr. Brody is now  
4 articulating. I have never in my 35 years of  
5 practice seen an ethics matter, which this is  
6 becoming, alleged where someone is not told, This is  
7 what you're accused of doing. And that is a real  
8 problem here.

9                   So I -- if we want to have the scope  
10 be broad, Mr. Brody is arguing that this week's  
11 discussion showed that, you know, that Mr. Haas is a  
12 great guy and Beasley Allen is a bad guy. How is  
13 that conceivably relevant in any way to the question  
14 of whether Mr. Conlan shared confidential  
15 information with my client. Isn't that the issue  
16 we're here before you.

17                   THE COURT: That's what Judge Singh  
18 and I believe the issue is.

19                   MR. POLLOCK: So to me, if we go  
20 miles and miles beyond that, it has ramifications --

21                   THE COURT: I haven't seen it go that  
22 far, and I don't think --

23                   MR. POLLOCK: He just argued he wants  
24 to do it.

25                   THE COURT: I didn't hear that yet.

1 But, you know, it squarely is: Did Mr. Conlan share  
2 confidential information with Beasley Allen? You  
3 know, if I were to write a decision today, I would  
4 say, The issue before this Court is: Did Mr. Conlan  
5 share confidential Johnson & Johnson information  
6 with Beasley Allen.

7 MR. POLLOCK: I'm with you.

8 THE COURT: And I would then start  
9 with the, as we did in law school: rules, analysis,  
10 conclusion.

11 MR. POLLOCK: Yup.

12 THE COURT: Credibility based on the  
13 seven factors that are found, candidly, in our  
14 evidence rules, consistency, et cetera, does it make  
15 sense. And understandably, I was also thinking  
16 about this on my way in, is you have the charge  
17 where "is false in one false in all," does that come  
18 into play with regard to credibility.

19 So I think, and I will turn the dais,  
20 the bench over to Judge Singh, but that's the issue  
21 that we're here for. That's it.

22 Judge Singh?

23 JUDGE SINGH: I don't disagree. And  
24 you are all familiar with federal court standards  
25 for motions for disqualification, as well. So we

1 are looking at the same issue and the ramifications  
2 thereof.

3 MR. BRODY: Absolutely. And the  
4 questioning that I -- the 30, 40 minutes that I have  
5 is focused on wrapping up the rest of that and,  
6 hopefully, giving the Court what it needs in order  
7 to evaluate the questions that it's going to have to  
8 evaluate here.

9 It's -- you know, certainly, this is  
10 not an appearance of impropriety case; this is a  
11 case of actual impropriety. And we are looking  
12 forward, based on the record that has been  
13 developed, to setting that out, and in the briefing  
14 that the Court has asked for, and explaining  
15 precisely why it is that you have actual  
16 impropriety, you have actual violations of the  
17 ethical rules, and why it is that disqualification  
18 is required here.

19 MR. POLLOCK: Thank you, Your Honors.

20 THE COURT: All right. Thank you.

21 Mr. Birchfield, we'll administer the  
22 oath one more time, today, May 3rd, 2024.

23 Mr. Birchfield, please raise your  
24 right hand, tell us your name, and spell your last  
25 name, sir.

1 THE WITNESS: Andy Birchfield,  
2 B-I-R-C-H-F-I-E-L-D.

3 - - -

4 ANDY BIRCHFIELD, having been duly  
5 sworn, was examined and testified as follows:

6 - - -

7 THE COURT: Thank you. You may be  
8 seated.

9 Mr. Brody.

10 - - -

11 CROSS EXAMINATION

12 - - -

13 BY MR. BRODY:

14 Q. Good morning, Mr. Birchfield.

15 A. Good morning.

16 Q. You recall providing testimony on  
17 April 10th about a draft term sheet that was  
18 exchanged between your firm and Legacy?

19 A. Yes.

20 Q. All right. And we had looked at --  
21 we had given you a copy of the full privilege log  
22 that was prepared by the plaintiffs steering  
23 committee asserting mediation privilege over  
24 documents that we had subpoenaed from KCIC.

25 Do you recall that?

1 A. Yes.

2 Q. All right. I have prepared, and if I  
3 may approach, an excerpt of that to make it a little  
4 easier to talk about the term sheet. I'm happy to  
5 give you the full privilege log, as well. I see you  
6 didn't bring a copy of it up with you. But I  
7 prepared an excerpt with the references to the term  
8 sheet taken directly from that, which I thought  
9 would make it easier.

10 If I may approach?

11 THE COURT: You may approach. Did  
12 you share that with Mr. Pollock?

13 MR. POLLOCK: Yes, I have a copy,  
14 Your Honor.

15 BY MR. BRODY:

16 Q. And I can give you a bigger one,  
17 which has larger font, if you think it would be  
18 helpful.

19 A. I'll use this. Let me try.

20 Q. Now, we're going to take this in  
21 chronological order. We have sorted the spreadsheet  
22 that the PSC provided to us and we put it in  
23 chronological order here.

24 So, going in chronological order,  
25 starting at the top, the first time we see your name



1 is on May 12th of last year, right? It's the second  
2 entry.

3 A. The second entry on here is May 12th,  
4 yes.

5 Q. And you're listed as the author,  
6 correct?

7 A. Correct.

8 Q. And you're listed as the author of a  
9 Draft Term Sheet for Legacy Ovarian Cancer Claim  
10 Proposal, right?

11 A. That's correct.

12 Q. All right. And then if you -- if you  
13 continue just below the two entries with your name,  
14 you see that on the 16th of May, Mr. Conlan --

15 MR. POLLOCK: I think -- mine is May  
16 24th. On the top. Okay. Got it.

17 BY MR. BRODY:

18 Q. The document number for the record  
19 is 111. Do you see it?

20 A. Yes.

21 Q. And so on the 16th, Mr. Conlan  
22 forwarded the proposal to KCIC, right?

23 A. I see that entry.

24 Q. And the plaintiffs steering committee  
25 has asserted mediation privilege over that

1 communication, as well, right?

2 A. Yes.

3 Q. Because your position is that the  
4 mediation privilege covers Mr. Conlan's  
5 communications with KCIC in this instance, right?

6 A. I presume so.

7 Q. As well as what you wrote in your  
8 communications with Mr. Conlan, correct?

9 A. Yes.

10 Q. And there are a number of emails back  
11 and forth addressing the term sheet. And then, if  
12 we go down into the green, which gets us to  
13 May 24th, which is about 12 days after your name  
14 first appears, we see your name again, right? It's  
15 number 20 in the document number column.

16 A. Yes.

17 Q. And that's May 24th, 2023, correct?

18 A. Yes.

19 Q. And that's, again, the Draft Term  
20 Sheet for Legacy Ovarian Cancer Claim Proposal,  
21 right?

22 A. Yes.

23 Q. But this time, what was on the 12th  
24 of May a seven-page document has grown to eight  
25 pages, hasn't it, if you look at the page count

1 column?

2 A. I see that entry on here.

3 Q. Right. And then it looks like there  
4 are a number of copies of it. You know, we see  
5 document 42, document 135. They're all eight pages,  
6 right?

7 A. That -- that's the entries here, yes.

8 Q. All right. Now, if you flip over to  
9 the next page and we move forward to June 7th, it's  
10 highlighted in green at the bottom. Do you see  
11 that?

12 A. Yes.

13 Q. And you see the document number 45?

14 A. Yes.

15 Q. That document, document number 45,  
16 you're the author of that, right?

17 A. I'm listed as the author, yes.

18 Q. That's a Draft Term Sheet for Legacy  
19 Ovarian Cancer Claim Proposal, correct?

20 A. Yes.

21 Q. And by that point, which is another  
22 two weeks exactly after the May 24th version, it had  
23 grown to 10 pages, hadn't it?

24 A. The -- the entry here is 10 pages.  
25 That is correct.

1 Q. Right.

2 A. I don't --

3 Q. And exact same description, Draft  
4 Term Sheet for Legacy Ovarian Cancer Claim Proposal,  
5 correct?

6 A. Yes. I can't say that that is the --  
7 you know, that the term sheet grew to 10 pages.  
8 That's a general description. That's the number of  
9 pages that's in the entry. I haven't -- I haven't  
10 reviewed any of it to see what that, you know, what  
11 that transmission was.

12 But the essence of that term sheet as  
13 I described previously, that was our term sheet. It  
14 was a term sheet that had been prepared before,  
15 before the dismissal of LTL 1, as we were -- and  
16 before the filing of J&J's second bankruptcy. We  
17 had prepared a term sheet. We had prepared a term  
18 sheet and offered to meet and present that term  
19 sheet --

20 Q. And that's -- and Mr. Birchfield, I  
21 think you're getting very far afield from my  
22 question.

23 THE COURT: Let him complete his  
24 thought, Mr. Brody.

25 MR. BRODY: Sure.

1 THE WITNESS: And as I've testified  
2 previously, that term sheet was prepared and there  
3 were no substantive changes in any discussions with  
4 -- with Legacy regarding that term sheet.

5 Scott Gilbert --

6 BY MR. BRODY:

7 Q. That's -- I think that's -- and just  
8 on that point, on conversations, we actually see a  
9 reference to a conversation that you had with Legacy  
10 and KCIC. It's document 118. It's the same date,  
11 June 7th, 2023. It's just three or four lines below  
12 the entry we were looking at. And there's a  
13 reference to a KCIC and Legacy discussion of  
14 conversation with ovarian cancer counsel regarding  
15 comments on draft ovarian cancer term sheet, right?

16 A. Right.

17 Q. As well as discussing additional  
18 ovarian cancer resolution proposal details, right?

19 A. That is -- that's what the entry  
20 says, and --

21 Q. Yeah. And ovarian cancer counsel  
22 did, I mean, as you just mentioned in your prior  
23 answer, have discussions with Legacy about the term  
24 sheet, correct?

25 A. We discussed the term sheet and we

1 provided the draft term sheet to KCIC, and there  
2 were discussions about the -- how the term sheet  
3 would be applied. The terms of that agreement would  
4 be applied in a claims administration process. That  
5 was the role of KCIC.

6 Q. You didn't just provide it to KCIC.  
7 You also provided it to Mr. Conlan, because as we  
8 saw, he forwarded on May 16th the draft term sheet.  
9 He was the one who forwarded it to KCIC, right?

10 A. Correct, because KCIC is the claims  
11 administrator who was working with -- working with  
12 Legacy, that Legacy had brought in.

13 Q. And then you all got together and you  
14 discussed it. And over the course of the next  
15 three, four weeks, as we see from the privilege log,  
16 the page count grew from seven to eight and then to  
17 10 pages, right?

18 MR. POLLOCK: Objection;  
19 argumentative, assumes facts not in -- not in  
20 evidence. The document actually could be red-lined.  
21 We have no idea why it went from four to eight to  
22 10. We have no clue where it came from.

23 THE COURT: Well, I'm going to  
24 overrule the objection. But why don't you clarify  
25 with your questions, Mr. Brody, how it grew, why it

1 grew, and maybe get testimony from Mr. Birchfield  
2 who will provide background with regard to the  
3 length of this particular document.

4 MR. BRODY: Sure.

5 THE COURT: I don't think it's  
6 argumentative, but, you know, address the question  
7 then.

8 MR. BRODY: Sure.

9 BY MR. BRODY:

10 Q. Based on the privilege log, the page  
11 count for what is described as that proposal started  
12 at seven pages, became eight pages, and then became  
13 10 pages; right?

14 A. The entries on this privilege log do  
15 change, just as you said. That does not -- that  
16 does not tell me that the term sheet, itself, is  
17 being changed in any respect. So I can acknowledge  
18 that that's what the entries say.

19 Q. Now, if I --

20 A. I can't go beyond that.

21 Q. -- understood your testimony on April  
22 10th, the last time we were here, your position is  
23 that it was just, and I'm going to use your words  
24 from the transcript, grammatical type stuff that was  
25 addressed in the back and forth, right?

1           A.           That's correct. There were no  
2 substantive changes.

3           Q.           Right. And you were willing to say  
4 that, but you're asserting that the substance of the  
5 term sheet, itself, is privileged, so we can't see  
6 it; right?

7           A.           If you want to see the term sheet,  
8 I'll be glad to show you the term sheet. What I'm  
9 not willing to do here -- I was prepared, I was  
10 prepared on behalf of the ovarian cancer committee  
11 to present that term sheet to J&J, to the general  
12 counsel, Ms. Forminard and Mr. Haas, about two weeks  
13 before the second bankruptcy petition was filed.

14                       We made that offer. We were prepared  
15 to -- to share that term sheet. That is -- that is  
16 not an issue. But what we were not prepared to do  
17 was to eviscerate the mediation privilege and just  
18 say -- because this is -- this is covered in the  
19 mediation process. That's why we asserted the  
20 privilege. It's not that the term sheet is  
21 secretive. This was a term sheet that would have  
22 gone to J&J. We were prepared to present it to J&J.

23           Q.           So you asserted the mediation  
24 privilege over the version that is described as the  
25 seven-page version of the term sheet, over the



1 eight-page version of the term sheet, over what is  
2 described as the 10-page page count version of the  
3 term sheet, over the discussions that the ovarian  
4 cancer counsel had with Legacy about the term sheet;  
5 you have asserted mediation privilege over all of  
6 that, right?

7 MR. POLLOCK: Objection; it's  
8 argumentative. This is a -- this is a closing  
9 argument made in the middle of questioning. Does he  
10 really -- he knows the mediation privilege has been  
11 asserted. He's already stipulated that the page  
12 count is the page count. So it's inappropriate for  
13 counsel to be making an argument to the Court like  
14 this is a jury.

15 THE COURT: Mr. Brody.

16 MR. BRODY: I just asked him if he's  
17 asserting mediation privilege as to all the  
18 different versions of the term sheet, as well as the  
19 discussions that were had with Mr. Conlan --

20 MR. POLLOCK: We're asserting the  
21 mediation privilege.

22 MR. BRODY: -- about the term sheet.  
23 That's the question.

24 THE COURT: Across all three  
25 documents?

1 MR. POLLOCK: Your Honor, Judge  
2 Schneider has ruled on these issues. We are  
3 asserting the mediation privilege. I'll answer for  
4 the witness. We're standing by it.

5 THE COURT: Okay. Notwithstanding  
6 that Mr. Birchfield said he was prepared to share  
7 that document with J&J?

8 MR. POLLOCK: He was prepared to  
9 provide a document to J&J. He didn't say which one.  
10 He said he was going to provide a term sheet to J&J.  
11 You've got multiple variations, you've got comments  
12 of counsel. I would doubt that J&J would provide us  
13 with a draft that has all their mark-ups. We're  
14 certainly willing and able right now to provide a  
15 term sheet to them, if that's what they want. But  
16 I'm not going to give him a mediation-privileged  
17 protected document.

18 THE COURT: Okay. So the privilege  
19 was asserted then, Mr. Brody.

20 MR. BRODY: Yes. And I think  
21 Mr. Pollock just frankly made my point. So why  
22 don't we talk about something that was happening at  
23 the same time these term sheets were going back and  
24 forth.

25 BY MR. BRODY:

1 Q. The whole time that you were sending  
2 term sheets back and forth to Legacy and to KCIC,  
3 you and the tort claimants committee were trying to  
4 get the LTL 2 bankruptcy dismissed, right?

5 A. Yes. I'm just trying to -- trying to  
6 get the timing right. I mean, we -- we had -- we  
7 did not engage. We didn't have any discussions with  
8 -- with Legacy until after, until after the second  
9 bankruptcy petition, you know, was filed.

10 So while -- so, yes, the mediate --  
11 the -- Judge Kaplan ordered mediation after LTL 2  
12 was filed, and that's the period when we were having  
13 discussions with Legacy.

14 Q. Right. And if I -- let me make this  
15 simpler, if you will allow me to do it this way.

16 If I told you that the claimants  
17 committee filed its motion to dismiss the bankruptcy  
18 on April 24th of last year, would you disagree with  
19 me?

20 A. No.

21 Q. All right. And then, as we saw, at  
22 least from the documents on the privilege log, the  
23 first version of the term sheet that you sent over  
24 to Legacy was on May 12th, while that was pending?

25 A. Correct.

1           Q.       Now, you knew, of course, that  
2       Johnson & Johnson wanted plan confirmation in the  
3       bankruptcy proceeding, right? That was Johnson &  
4       Johnson's objective, correct?

5           A.       Right.

6           Q.       And then you filed a motion to  
7       dismiss, correct?

8           A.       Yes. I mean, I didn't. The TCC did,  
9       but I'm part of that.

10          Q.       You're part of that, right? I'm  
11       putting you in with the TCC, because you were part  
12       of the TCC?

13          A.       Yes.

14          Q.       You didn't want the plan to come up  
15       for a vote, right?

16          A.       We -- no, we did not want J&J's plan  
17       to come up for a vote. We were prepared --

18          Q.       Neither did --

19                   MR. POLLOCK: Your Honor, he keeps on  
20       doing this. I want him to answer the question,  
21       please.

22                   THE COURT: Well, so does this Court.  
23       So go ahead, Mr. Birchfield.

24                   THE WITNESS: So we were -- we were  
25       preparing at the -- at the same time that we were

1 moving forward with our motion to dismiss, we were  
2 also preparing an alternative plan to be presented.  
3 And we had asked the Court, if the Court denied our  
4 motion to dismiss, we -- we wanted to present an  
5 alternative plan. And that -- that would have been  
6 voted on, had the -- had the judge -- had Judge  
7 Kaplan not dismissed the bankruptcy and had allowed  
8 us to move forward with a competitive plan.

9 BY MR. BRODY:

10 Q. I guess Mr. Conlan didn't want the  
11 bankruptcy plan to come up for a vote, either, did  
12 he?

13 MR. POLLOCK: Objection; asks for  
14 speculation as to what Mr. Conlan wanted. He's not  
15 here to testify.

16 THE COURT: Unless Mr. Birchfield  
17 knows.

18 THE WITNESS: I don't know.

19 BY MR. BRODY:

20 Q. But you heard Mr. Conlan testify on  
21 April 10th that if the Legacy proposal was accepted,  
22 he and Legacy would stand to make money, correct?

23 A. Yes.

24 Q. Right. And that's not something that  
25 he would be able to take advantage of if J&J's

1 preferred resolution through a plan confirmation in  
2 the bankruptcy court had been accomplished, correct?

3 A. That's true only if you accept the  
4 version of the plan that J&J put forward. A  
5 bankruptcy plan that did include an option for the  
6 Legacy toggle, I believe as he testified to  
7 previously, that would have been -- that would have  
8 been part of a bankruptcy plan. It would have  
9 included an option. It would have included in the  
10 alternative plan that we were putting forward. That  
11 was part of the discussions that were going on at  
12 that time.

13 Q. And your alternative was -- was not  
14 what J&J put forth, was it?

15 A. No. It is very clear that what --  
16 what I want on behalf of my clients, which is a fair  
17 and reasonable compensation plan, is not what J&J  
18 wants, and we are opposed to that. It is not --

19 Q. And so --

20 A. -- that we're opposed to bankruptcy,  
21 period. Because in the very beginning, before --  
22 before J&J filed its first bankruptcy, we were  
23 working toward a resolution. We were working toward  
24 a resolution that would have included a bankruptcy  
25 component.

1                   When J&J filed its first bankruptcy,  
2       I was pushing, as Mr. Haas knows, I was pushing --

3                   MR. BRODY:   We -- we're so far afield  
4       of my question.

5                   THE COURT:   I'm going to let him  
6       complete the testimony. I'm not going to have a  
7       filibuster, so to speak.

8                   But go ahead, Mr. Birchfield.

9                   THE WITNESS:  It's not that we were  
10      opposed to bankruptcy, period. Not at the  
11      beginning, because we were trying, we were trying to  
12      negotiate. Before the LTL motion to dismiss, we  
13      were negotiating a plan in bankruptcy. It was only  
14      after it became very clear that we would not be able  
15      to get reasonable compensation for our clients as  
16      long as J&J had the weapon of a bankruptcy plan.  
17      That's when we became adamant that --

18                  THE COURT:   And I think that's a good  
19      place to stop, Mr. Birchfield.

20                  Go ahead, Mr. Brody.

21                  MR. BRODY:   Thanks.

22      BY MR. BRODY:

23                  Q.           So Mr. Birchfield, I think, even  
24      after all of that, that we are on the same page  
25      here, is that this Legacy toggle that you talked

1 about was not what J&J was proposing and not what  
2 J&J wanted to accomplish through the LTL 2  
3 bankruptcy, correct?

4 A. They did not want to -- they did not  
5 want to do the -- they didn't want to pay the added  
6 amount that would be necessary. But what J&J was  
7 saying at that point was that they wanted finality.  
8 They are looking for finality. They are taking the  
9 position it would only be achieved through  
10 bankruptcy, which is false. And the Legacy -- the  
11 Legacy option was a way for J&J to get finality  
12 without -- without coercing claimants into a  
13 bankruptcy plan.

14 Q. That was -- that was -- I mean, let's  
15 -- you understand that J&J would object to the use  
16 of the word "coerce" being attached to that, right?

17 A. No.

18 Q. And you understand -- I mean, come  
19 on, Mr. Birchfield. J&J -- you know J&J proposed an  
20 \$8.9 billion resolution of the claims through the  
21 LTL 2 bankruptcy that it wanted claimants to be able  
22 to vote on, right?

23 A. That is true.

24 Q. And you did not want claimants to be  
25 able to vote on that, did you?



1           A.           It's not that I was opposed to  
2           claimants voting. It is -- and it's not --

3           Q.           That's why you --

4                       MR. POLLOCK: Your Honor, please.

5                       THE COURT: Hold on, Mr. Birchfield.

6                       MR. POLLOCK: He's answering  
7           the questions.

8                       THE COURT: Let me hear the full  
9           testimony based on that question first. Do you  
10          remember the question, Mr. Birchfield?

11                      THE WITNESS: That I'm opposed --  
12          that I'm opposed to claimants voting.

13                      THE COURT: Right.

14                      THE WITNESS: We're not opposed to a  
15          vote that would be a fair vote. We are opposed --  
16          we are opposed to a plan that would essentially  
17          stuff the ballot box in order to coerce the more  
18          serious and legitimate claimants to accept  
19          unreasonable values.

20          BY MR. BRODY:

21                      Q.           You didn't want the claimants who  
22          would have a right to vote on the plan to be able to  
23          vote on the plan; that's why you wanted to dismiss  
24          the bankruptcy, right?

25                      MR. POLLOCK: Objection, Your Honor.

1 Asked and answered twice now.

2 THE COURT: Well, I don't know if he  
3 answered, if I've heard the answer to that question.  
4 Mr. Birchfield.

5 THE WITNESS: There were multiple  
6 reasons that we were opposing a bankruptcy.

7 BY MR. BRODY:

8 Q. And that was one of them, right?

9 A. No. We were -- we were opposing a  
10 vote as J&J had constructed in that plan, yes.

11 Q. Right.

12 THE COURT: Let us get back to our  
13 central issue, Mr. Brody. I know it appears you're  
14 trying to lay some groundwork here, but let's not  
15 lose focus of what our issue is as regards to the  
16 allegations against Mr. Conlan.

17 MR. BRODY: Of course.

18 BY MR. BRODY:

19 Q. So, Mr. Birchfield, before we  
20 recessed on April 10, you started testifying about  
21 your willingness in the fall of last year to join  
22 Mr. Conlan to present a proposed settlement matrix  
23 to J&J. Do you recall that testimony?

24 A. Yes. Mr. Conlan had asked me if I  
25 would --

1           Q.           It's just a yes. I just asked you if  
2           you recall that testimony. That's all I asked.

3           A.           Would I be -- he -- would I be  
4           willing to join with him --

5           Q.           It's a yes or no.

6                       MR. POLLOCK: Your Honor.

7                       MR. BRODY: I'm just --

8                       MR. POLLOCK: It's not a yes or no.

9                       MR. BRODY: -- orienting him.

10                      MR. POLLOCK: If he needs to give you  
11           a narrative response, he gives you a narrative. I  
12           think it can be a brief answer, but Mr. Brody keeps  
13           on clipping off his answers because he doesn't like  
14           the answer.

15                      THE COURT: Well, I don't necessarily  
16           know if Mr. Brody likes or dislikes the answer. But  
17           focusing-wise, what's your response to that question  
18           or your testimony, Mr. Birchfield?

19                      THE WITNESS: Will you repeat the  
20           question?

21           BY MR. BRODY:

22           Q.           Sure. My question was simply: Do  
23           you recall, before we recessed on April 10th,  
24           beginning to talk about your willingness to join  
25           Mr. Conlan to present a proposed settlement matrix

1 to Johnson & Johnson in the fall of last year? Do  
2 you recall that testimony?

3 A. I do not recall that testimony  
4 specifically. I did agree to meet with J&J to  
5 explain the matrix.

6 Q. And we -- we received a lot of  
7 testimony on it, so I don't want to spend too much  
8 time on it, but we see your willingness reflected  
9 and disclosed to J&J for the first time on October  
10 18th of last year in an email from Mr. Conlan that's  
11 in your binder as Hearing Exhibit 4.

12 You -- you can take a look at it.

13 THE COURT: Do you have that binder,  
14 Mr. Birchfield?

15 THE WITNESS: I do. I do, Your  
16 Honor.

17 THE COURT: Okay.

18 THE WITNESS: So, Mr. Brody, may I  
19 ask, what is the question? I mean, are you asking  
20 me, because you're saying that that's the first time  
21 that he disclosed --

22 MR. BRODY: I'm asking you --

23 THE WITNESS: -- and I can't answer  
24 that.

25 BY MR. BRODY:

1 Q. I'm asking you if you're familiar  
2 with that, that exhibit.

3 A. I mean, yes, I am familiar with the  
4 exhibit, you know, since this -- since it's been  
5 filed, Exhibit Number 4.

6 Q. Now, October 18th of last year, that  
7 was shortly after the Mass Torts Made Perfect  
8 conference that took place in Las Vegas last fall,  
9 right?

10 A. That sounds right.

11 Q. And you heard Mr. Murdica mention  
12 that he had actually attended that conference last  
13 fall. He testified to that on March 25th, right?

14 A. I know that he was in Las Vegas. I'm  
15 not sure that he attended the conference, but he was  
16 there.

17 Q. All right. And the conference was  
18 October 10th to the 12th of last year, last fall's  
19 version?

20 A. That sounds about right. I don't  
21 recall specifically.

22 Q. And this is something that happens  
23 regularly, right, this conference?

24 A. Yes. There would be an annual --  
25 annual meeting.

1 Q. And it's a conference where  
2 plaintiffs' lawyers come together from around the  
3 country to talk about things like the talc  
4 litigation, right?

5 A. Yes.

6 Q. You -- you pitched the Legacy  
7 proposal to other talc plaintiffs' lawyers at the  
8 Mass Torts Made Perfect meeting last year, didn't  
9 you?

10 A. No.

11 Q. You discussed it with them?

12 A. I may have had discussions about an  
13 option that would give J&J finality, yes.

14 Q. Right. An option involving  
15 structural optimization and disaffiliation, correct?

16 A. Yes.

17 Q. Because you were trying to garner  
18 support for the proposal that you had been  
19 discussing with Mr. Conlan?

20 A. No. I mean --

21 Q. Was Mr. Conlan there, by the way, at  
22 Mass Torts Made Perfect last year?

23 A. Not that I know of.

24 Q. All right. Going back to the Hearing  
25 Exhibit 4, you see that Mr. Conlan there offered

1 that you, Doug Dachille, and he were prepared to  
2 meet with J&J's treasurer in person to share and  
3 discuss the terms of a matrix, right?

4 A. Yes.

5 Q. And that's a matrix that, I take it  
6 from your testimony, that you developed, right?

7 A. Yes. I mean, I developed it along  
8 with the ovarian cancer negotiating group, yes.

9 Q. And shared it with Mr. Conlan and  
10 Legacy, right?

11 A. Yes.

12 Q. And, you know, at the end of the day,  
13 based on an anticipated number of claimants and the  
14 values assigned to claims in a matrix, the math has  
15 to work if that matrix is going to be associated  
16 with a total dollar figure, right?

17 MR. POLLOCK: Objection; vague.

18 THE COURT: Vague?

19 MR. POLLOCK: Vague. I don't know  
20 what that means, that it has to work as to a total  
21 dollar figure.

22 THE WITNESS: Well, I mean,  
23 obviously, if the total number of claimants that  
24 are, you know, that are submitted and are expected  
25 to receive compensation under that grid, if it

1 exceeds -- if it exceeds the total amount of the  
2 acquisition by a significant number, then it  
3 wouldn't work. That's -- that is true.

4 BY MR. BRODY:

5 Q. Right, right. So if -- yeah, you  
6 can't -- you can't put together a claims matrix  
7 where, you know, every claim's worth a million  
8 dollars, you have a hundred claims, and your funding  
9 it at \$10 million. You just can't do that, right?

10 A. That's right.

11 Q. All right. Mr. Conlan was, of  
12 course, being honest, I think, as he testified with  
13 his offer to have you come in. You were ready,  
14 willing, and able to come in and talk about the  
15 claims matrix, right?

16 A. I was.

17 Q. In connection with the proposal that  
18 Mr. Conlan was making to Johnson & Johnson for  
19 structural optimization and disaffiliation, right?

20 A. Yes.

21 Q. You had been actually in discussions  
22 with Mr. Conlan for months, at that point, right?

23 A. If you look at the time of our first  
24 discussion, our first discussion was in -- the first  
25 time I ever met him. It was in May. May 2nd. So



1 it had been months, true, it had been months between  
2 May and October.

3 Q. Yeah, five and a half months?

4 A. Yeah.

5 Q. The day that email was sent was the  
6 day after Johnson & Johnson's third quarter earnings  
7 call. You're aware of that, right?

8 A. I'm aware that -- I'm aware that  
9 Mr. Haas made statements on October the 17th, and I  
10 can see the date of this, this letter on October the  
11 18th, yes.

12 Q. Right. And you knew -- I mean, you  
13 certainly knew that what was being proposed through  
14 Legacy was not what Mr. Haas had announced on the  
15 earnings call as any part of the company's preferred  
16 course through the bankruptcy process, right?

17 A. Is the -- is the Legacy proposal a  
18 bankruptcy proposal? No, it's not.

19 Q. Right.

20 A. What -- what we had understood --

21 Q. And --

22 MR. POLLOCK: Hold on, please.

23 THE WITNESS: -- was that J&J was  
24 looking for finality, but we're -- and that was what  
25 we were making this proposal for. I mean, that's

1 what -- that's why I agreed to submit a, you know, a  
2 matrix, and that's why I, you know, offered, you  
3 know, for the -- you know, to have Legacy considered  
4 as part of a mediation, as part of a bankruptcy, you  
5 know, toggle point. Because this was a -- this  
6 would be a way that J&J could have gotten finality  
7 without -- without having a coercive bankruptcy plan  
8 in place.

9                   You know, this would be -- this  
10 matrix, this proposal would be an opt-in proposal,  
11 so the claimants would -- and their counsel would  
12 look at the settlement grid, they would look at the  
13 terms of that grid, and they would choose; do we  
14 want to voluntarily participate, or not.

15 BY MR. BRODY:

16               Q.           The proposal that was being made by  
17 Mr. Conlan and this settlement matrix it was  
18 attached to was not a bankruptcy proposal; it was a  
19 tort system proposal, wasn't it?

20               A.           Yes.

21               Q.           And the -- did -- I assume Mr. Conlan  
22 had -- had told you that J&J had told him that it  
23 did not believe the deal that he was proposing would  
24 actually provide finality?

25               A.           No.

1 Q. Did you -- did you miss that part of  
2 his testimony from April 10th?

3 A. You're asking me if he told me that,  
4 that -- you're asking me --

5 Q. I'm asking you -- well, let me ask  
6 you, did you know -- did you know that before April  
7 10th of this year?

8 A. That J&J had told Mr. Conlan that the  
9 Legacy option would not give them finality?

10 Q. That's right.

11 A. Okay. No.

12 Q. Let's take a look at Hearing Exhibit  
13 7.

14 A. I'm there.

15 Q. So this is the more detailed letter  
16 from Mr. Conlan that actually attaches the  
17 settlement matrix, right?

18 A. Yes.

19 Q. And that's the settlement matrix that  
20 you were prepared to come in and talk about with J&J  
21 jointly with Mr. Conlan and Mr. Dachille, right?

22 A. I would have been talking about the  
23 matrix. I would have gone in with Mr. Conlan and  
24 Mr. Dachille if J&J had made that invitation, yes.

25 Q. And this letter includes a \$19

1 billion total price tag that is associated with a  
2 tort system resolution that tacks on your matrix,  
3 right?

4 A. Yes. I see -- I see that it is a --  
5 it is a -- it has a \$19 billion number or such  
6 greater number as the, you know, the accountants,  
7 Pricewaterhouse, would determine is necessary to  
8 clear the noncash charge. I see the number.

9 Q. And he indicated that the proposal  
10 had been reviewed and was supported by leadership  
11 counsel on both the federal MDL and in state court  
12 cases across the country. Do you see that? It's on  
13 page 1. The paragraph starts, "Put simply..."

14 A. Yes.

15 Q. And that was true, right?

16 A. I had not seen -- I had not seen this  
17 proposal. What I had, what we -- what I had  
18 discussed with him is that we would support a -- a  
19 Legacy option being presented to J&J. It is -- this  
20 is a -- this would be an offer that J&J would have  
21 to accept.

22 If J&J -- if J&J were to accept, you  
23 know, this -- this option, then I would support -- I  
24 would support a -- a settlement agreement that  
25 incorporates this matrix that's attached as

1 Exhibit A.

2 Q. And you knew that -- I mean, I  
3 certainly I expect you knew that it was supported  
4 not just by you, but you had talked about it with  
5 other -- other plaintiffs' counsel; fair?

6 A. I have -- I knew that this would be  
7 supported because for four years, every day, every  
8 day, I had been working toward a resolution. So I  
9 talked to -- I talked to plaintiffs' lawyers about  
10 various options, and I have a high level of  
11 confidence that based on not only -- not only, you  
12 know, my work, but, you know, all of the members of  
13 the executive committee, all of the members of the  
14 TCC on the ovarian cancer side, we had been working  
15 on this intensely for a long time.

16 So I -- I knew --

17 Q. And so --

18 A. -- that it would be supported.

19 Q. And so Mr. Conlan was telling the  
20 truth when he wrote to J&J's board that Legacy's  
21 proposal has been reviewed and is supported by  
22 leadership counsel on both the federal MDL and in  
23 state court cases across the country, right?

24 A. I had not reviewed this proposal. I  
25 had not seen this, this letter or this proposal as

1 it is written. I had not seen that until you filed  
2 it. But I did -- I did provide the matrix and I did  
3 -- I did say that I would support that, and we have  
4 leadership roles in both the MDL and state court, in  
5 state court litigations across the country.

6 Q. And you -- you were on board with the  
7 statement that we saw from Mr. Conlan on October  
8 18th that lead counsel for the ovarian cancer  
9 claimants, including Andy Birchfield, for an MDL  
10 opt-in settlement matrix with Legacy would be  
11 expected to garner a 95 percent opt-in of current  
12 ovarian cancer claimants, right?

13 A. Yes, I told him that.

14 Q. Yeah, you -- that was going to be my  
15 next question. That's what you told him, correct?

16 A. Yes.

17 Q. All right. You were familiar -- by  
18 the way, at the same time all of this was going on,  
19 you publicly advocated for Mr. Conlan's proposal,  
20 right?

21 A. So, that may be a -- that may be a  
22 bit of a stretch. I mean, he -- he did, he did  
23 publish the structural optimization and -- in a  
24 op-ed piece, and I did, I did issue a press release  
25 that would have -- that said I think that this is a

1 -- this would be a win/win because it would give, at  
2 that point -- at that point I thought that J&J truly  
3 was looking for a way to get finality. And -- and  
4 that would be a win for J&J, but we -- the  
5 plaintiffs were also looking for fair and reasonable  
6 compensation, you know, and -- and the right to  
7 choose, and not a coercive plan.

8 Q. So, you know, you referred to a press  
9 release that you issued and to a piece that  
10 Mr. Conlan had written. We have -- and we looked at  
11 it with Mr. Conlan. The piece that he wrote is in  
12 your binder as Hearing Exhibit 15, if you could just  
13 verify that's what you were referring to.

14 A. Yes.

15 Q. And that was the one that was titled  
16 Time to Ditch the Texas Two-Step for a New Mass Tort  
17 Strategy, right?

18 A. Yes.

19 Q. And if you turn to Hearing Exhibit  
20 18, you express support for Mr. Conlan's article the  
21 very same day, right?

22 A. That's true.

23 Q. And your press release was titled Key  
24 Lawyer in Johnson & Johnson Talc Litigation Supports  
25 Call to Rethink Legal Strategies in Light of Failure

1 of Texas Two-Step, right?

2 A. Yes.

3 Q. And it indicates, "Leading mass tort  
4 lawyer, Andy Birchfield" -- that's you?

5 A. Yeah.

6 Q. -- "of the Beasley Allen law firm is  
7 expressing strong support for a thought-provoking  
8 article in Bloomberg Law authored by James Conlan, a  
9 seasoned expert in corporate restructuring and the  
10 former global practice leader of Sidley Austin's  
11 worldwide restructuring practice," right?

12 A. Yes.

13 Q. You didn't disclose that Mr. Conlan  
14 had represented J&J in the talc litigation, did you?

15 MR. POLLOCK: Objection;  
16 argumentative.

17 THE COURT: I don't find that  
18 argumentative, Mr. Pollock.

19 THE WITNESS: I -- I didn't --

20 THE COURT: Please answer the  
21 question, Mr. Birchfield.

22 THE WITNESS: I did not say -- I  
23 didn't say anything about, you know, him working at  
24 Faegre. This was -- this was -- the main point was  
25 the structural optimization and disaffiliation,



1 which he had developed while he was at Sidley, you  
2 know, at Sidley Austin.

3 At this, you know, at this point, you  
4 know, the only thing I knew about --

5 BY MR. BRODY:

6 Q. That's -- that's -- that's -- that's  
7 fine. No, you've -- that's -- and I think you  
8 indicated that you didn't refer to the fact that he  
9 had been at Faegre Drinker, did you?

10 A. I did not.

11 Q. All right. You didn't disclose the  
12 fact that you had been -- you know, you had met him  
13 and had been working with him for six months to the  
14 day at this point, right?

15 A. At this point, I had -- I had met him  
16 six months prior.

17 Q. Right. And just two weeks before  
18 this, he had offered that he and you and  
19 Mr. Dachille would go into J&J to pitch this idea?

20 A. Yes. On November -- on October the  
21 18th, the letter you just showed me.

22 Q. And somebody reading your press  
23 release wouldn't have known that, correct?

24 A. Somebody reading this press --  
25 there's nothing said in there about -- about an

1 offer to, you know, to meet with J&J. That's true.

2 Q. You knew, however, at the time that  
3 you wrote this that this was the Texas -- the  
4 structural optimization and resolution through the  
5 tort system that was being pitched was adverse to  
6 J&J's preferred resolution through the bankruptcy  
7 process that had been announced by Mr. Haas on  
8 October 17th, just a couple of weeks before, right?

9 A. I mean, I had -- Mr. Haas has made  
10 clear that his preference is bankruptcy, period.

11 Q. And so what both you and Mr. Conlan  
12 advocated in your dual November 2nd public  
13 statements was adverse to what J&J wanted, right?

14 A. I didn't know that. I thought J&J  
15 wanted finality. I know that Mr. Haas, you know,  
16 preferred bankruptcy. What -- what I had put I had  
17 learned through, you know, through all of this  
18 process, through two mediations, estimation process.  
19 I had learned that J&J -- I had heard over and over  
20 again J&J is looking for finality. They believed  
21 that finality could only be achieved through  
22 bankruptcy. That was --

23 Q. And you were advocating something  
24 else?

25 A. I was -- I was looking for -- I was

1 looking for a way to give J&J what it said it  
2 wanted, and getting our clients what we believed  
3 they deserved. And that's -- that's why, you know,  
4 when -- when Mr. Conlan presented, you know, a path  
5 that would offer finality to a company that had been  
6 done and you -- I had come to see that that had --  
7 that had viability.

8 And so -- so I -- I have submitted a  
9 matrix that would be part of that proposal to see if  
10 that proposal would be accepted -- acceptable to  
11 J&J.

12 Q. And what you -- what you said is that  
13 plaintiffs' lawyers shared Mr. Conlan's vision of  
14 what you called a win/win solution where claimants  
15 can pursue their claims in the tort system, right?

16 A. Yes.

17 Q. It would certainly be a win for you,  
18 right?

19 MR. POLLOCK: Objection.

20 THE WITNESS: A win for me is a win  
21 for our clients, period.

22 BY MR. BRODY:

23 Q. The tort system resolution and your  
24 firm's position on the MDL PSC, you stand to get  
25 money from a common benefit fund in the MDL if

1 there's a tort system resolution, correct?

2 A. That would be up to -- that would be  
3 up to the court. That would be up to the MDL court.  
4 But it is also true that common benefit, you know,  
5 funds are available in bankruptcy proceedings, too.

6 Q. Not in the J&J bankruptcy proposal,  
7 correct?

8 A. I haven't -- I haven't seen, you  
9 know, the -- I haven't seen the TDP, you know, for  
10 -- for the next, but I'm sure that that's the -- I'm  
11 sure that that's the case, based on everything that  
12 I have -- I have heard so far.

13 Q. So you were opposed to it, and you're  
14 not familiar with the terms of it?

15 A. Oh, I'm familiar with the terms  
16 enough to know what the claimants would get or  
17 possibly could get. I know the upper limits of what  
18 the claimants could get under the J&J proposal  
19 because I know it states in there, you know, in  
20 their proposal and what they have rolled out what  
21 the total amount would be. And I know what the -- I  
22 have a very good idea of what the total number of  
23 claimants are. So I know it falls far short of what  
24 claimants would be -- would be a reasonable and fair  
25 settlement for claimants.

1           Q.           With all due respect, Mr. Birchfield,  
2   I don't -- I don't think you answered my question.  
3   And my question was simply -- well, let me -- I'll  
4   rephrase it so that I can be sure we're on the same  
5   page.

6                       Are you so unfamiliar with the terms  
7   of the bankruptcy proposal that you were opposing  
8   and seeking to dismiss that you're not aware of  
9   whether money from that proposal would go into the  
10   MDL common benefit fund or not?

11           A.           I know the -- I know the terms that  
12   J&J put forward in their proposal, and that proposal  
13   did not -- did not provide for common benefit fees.

14           Q.           Right. And you were also generally  
15   familiar with the terms of the MDL order  
16   establishing the common benefit fund, aren't you?

17           A.           I am.

18           Q.           And pursuant to the common benefit  
19   order that Judge Wolfson entered in the federal MDL,  
20   up to 12 percent, 10 percent fee and 2 percent cost,  
21   of any amount recovered on talc claims in the MDL is  
22   assigned to a common benefit fund, correct?

23           A.           No. Up to -- up to 10 percent fees  
24   and up to 2 percent costs could be. That's --

25           Q.           And that's exactly what I said,

1 right?

2 A. I'm not so sure. There are other  
3 provisions, so it's not a -- it's not determined. I  
4 mean, this is a -- you know, this is a -- an order  
5 that is entered to provide holdbacks on an interim  
6 basis. At the end of the day, the Court, the  
7 Article III judge would make that determination  
8 about what the appropriate amount is.

9 Q. Your general understanding, though,  
10 just -- just so we're clear, I don't think this is  
11 that complicated, is that the range of fees that  
12 could be contributed to the common benefit fund is  
13 anywhere from 8 percent to 12 percent of the gross  
14 recovery amount, depending upon whether or not the  
15 individual firms were early participants or not,  
16 right?

17 A. It would be -- it would be 6 percent  
18 fees to 10 percent fees and 2 percent cost.

19 Q. For a total of 8 to 12 percent,  
20 correct?

21 A. Yes.

22 Q. All right.

23 A. Not fees, but fees and costs.

24 Q. And that separate and apart from that  
25 8 to 12 percent, the fees that you, Beasley Allen,

1 otherwise charge your talc clients is a 40 percent  
2 contingency fee, correct?

3 A. It's not -- it's not truly separate  
4 and apart because the, you know, the common benefit  
5 fees -- the common benefit fees are deducted from  
6 the contingency fees.

7 Q. All right. So let's just talk about  
8 the common benefit fees. Okay?

9 A. Okay.

10 Q. We're talking about --

11 MR. POLLOCK: Your Honor --

12 BY MR. BRODY:

13 Q. -- 8 to 12 percent?

14 THE COURT: Sure.

15 MR. POLLOCK: We're here on RPCs 1.6,  
16 1.10.

17 THE COURT: You have a relevancy  
18 question, right?

19 MR. POLLOCK: He had this whole  
20 discussion in the press.

21 THE COURT: I don't need to catch up,  
22 Mr. Pollock.

23 Mr. Brody, how is this relevant with  
24 regard to the conflict, the alleged conflict with  
25 Mr. Conlan?

1 MR. BRODY: It's relevant to the  
2 motivations for Mr. Birchfield to, you know, in  
3 violation of the ethical rules, align himself with  
4 Mr. Conlan without paying mind to the ethical rules,  
5 without disclosing to J&J that he was working with  
6 its former outside counsel from Faegre Drinker.

7 All of it goes to why it is -- and it  
8 frankly goes to credibility, as well -- why it is  
9 that Mr. Birchfield would so recklessly align  
10 himself with one of J&J's former outside lawyers on  
11 the very same matter.

12 MR. POLLOCK: There's no proffer that  
13 Mr. Conlan and Mr. Birchfield are sharing fees.  
14 There's no proffer there's an agreement between  
15 Mr. Birchfield and Mr. Conlan to share fees. What  
16 this is has nothing to do, zero to do with what's  
17 before you.

18 This is Mr. Haas' effort to try and  
19 get a sound byte in the national press so he can  
20 attack Beasley Allen on a different matter outside  
21 this courtroom, which is that they're greedy buggers  
22 who are simply trying to make money. That's his  
23 argument, and it's a wonderful argument.

24 Andy has a great argument in  
25 response: I'm not. I'm trying to get a fair and



1 reasonable compensation for my clients. And he'll  
2 have the opportunity to answer that.

3 But respectfully, Your Honor, this is  
4 -- if we're going to try the Beasley Allen law firm,  
5 then we ought to get all the facts up here. Let's  
6 just go do it. But if we're here to try the ethics  
7 issue as a basis for disqualification, this is so  
8 far remote, so prejudicial, we should cut it off  
9 right now.

10 THE COURT: I don't know if it's  
11 prejudicial. I don't know if it's remote. I think  
12 there's some relevancy, Mr. Brody. We can't really  
13 -- you know, we understand, and the Court can take  
14 judicial notice of the common benefit fund. We all  
15 know that. We know that plaintiffs' attorneys, you  
16 know, have a percentage that's built into any  
17 recovery.

18 But let's get it back focused to  
19 whether Mr. Conlan, or not, shared confidential J&J.  
20 So, you know, to the extent J&J is trying to suggest  
21 there's motivation here, or not, I think it gets a  
22 little bit remote with regard to relevancy and why  
23 we're here.

24 So I don't know if you want to adjust  
25 your questions, fine-tune your questions, but I

1 don't think -- and I don't think that's really on  
2 point with why we're here.

3 MR. BRODY: I think I can wrap this  
4 line of questions up with two, just two simple  
5 questions.

6 THE COURT: It's clear. I don't  
7 think there's any secret here. J&J wanted  
8 something, "X"; the plaintiff, including  
9 Mr. Birchfield, wanted "Y." To the extent there's a  
10 difference of opinion, the Courts accept that. You  
11 know, but we really want to get back to where is  
12 Mr. Conlan, and then the issue before this Court.

13 MR. BRODY: And I'm happy to --  
14 actually, I can wrap it up with a single question.  
15 BY MR. BRODY:

16 Q. Just in terms of the common benefit  
17 fund, Mr. Birchfield, the difference in terms of  
18 amounts that would come into the common benefit fund  
19 via an \$8.9 billion resolution -- if it's an \$8.9  
20 billion resolution in the tort system and the money  
21 is going into the common benefit fund, 12 percent of  
22 that is more than a billion dollars, right?

23 A. Are you asking me to do the math? I  
24 mean, are you asking me if your math is correct?

25 Q. Yes.

1 THE COURT: Do you need a calculator?

2 THE WITNESS: Maybe so. Are you  
3 saying 12.9 --

4 MR. POLLOCK: Can we take judicial  
5 notice that whatever the math is --

6 THE COURT: It's a lot of money.  
7 It's a lot of money.

8 BY MR. BRODY:

9 Q. And if you go to 19 billion, it's  
10 double-plus, right?

11 A. That's typically not the way that  
12 common benefit funds work. You -- typically, what  
13 courts have done over decades with common benefit is  
14 that the -- the larger, you know, the larger the  
15 recovery, depending on the lodestar and the amount  
16 of hours that are put in, you know, those numbers,  
17 the percentage would be reduced.

18 But if you're asking me if the math,  
19 if 12 percent of 8.9 is less than 12 percent of 19  
20 billion, the answer is yes.

21 THE COURT: Now, let me just address.  
22 You know, obviously, if that focuses on the MDL and  
23 any award by the District Court judge, that is  
24 prognosticating. There's been no determination.  
25 And I will have Judge Singh, if Judge Singh would

1 like to address that, go ahead.

2 JUDGE SINGH: Just to be abundantly  
3 clear, to the extent there's any proffer of what  
4 would be recoverable under the common benefit order  
5 entered in the MDL, the Court is not making any  
6 preliminary findings as to what may or may not be  
7 awarded on the back end.

8 I do understand and appreciate some  
9 of these points were raised in the parties' briefing  
10 on the application, at least in federal court, as to  
11 the potential import of the common benefit order.  
12 The Court will consider those arguments or not  
13 consider it, as appropriate, based off of the  
14 ethical standard.

15 Notwithstanding, I also recognize  
16 there is the request in the federal court  
17 application for the [prima] relief as applicable to  
18 the plaintiffs' steering committee. To the extent  
19 this may or may not be relevant to that alternative  
20 relief, it will be addressed by the Court.

21 MR. BRODY: Thank you, Your Honor.

22 BY MR. BRODY:

23 Q. Mr. Birchfield, you know who the  
24 attorney Allen Smith is, right?

25 A. I do.

1 Q. And you have a co-counsel  
2 relationship with the Allen Smith law firm, right?

3 A. Yes.

4 Q. As a general matter, speaking not  
5 limited to Allen Smith at this point, the majority  
6 of your talc claims are obtained or referred to you  
7 through co-counsel relationships, right?

8 A. Yes. I mean, the vast majority of,  
9 you know, the claims that -- where we represent  
10 claimants, we have co-counsel agreements.

11 Q. Among them, Allen Smith has a  
12 litigation financing arrangement, correct?

13 A. I understand that Allen Smith and  
14 probably a number of the co-counsel would have  
15 litigation funding agreements.

16 Q. And at some point, I believe Fortress  
17 was financing some of the Allen Smith claims?

18 MR. POLLOCK: Objection, Your Honor.  
19 Relevance as to what Allen Smith is doing regarding  
20 a litigation funding matter where the question is,  
21 Did Jim Conlan share confidential information with  
22 Beasley Allen.

23 So we're asking for hearsay as to the  
24 relationship regarding whatever this funding group  
25 is, what discussions they had. We don't have the

1 term sheets and conditions here, and we are far  
2 afield on relevancy because there's been no proof  
3 that litigation funding is relevant to  
4 Mr. Birchfield's decisions.

5 So I would -- I object to this on  
6 relevance.

7 THE COURT: Thank you.

8 Mr. Brody?

9 MR. BRODY: It goes to the same  
10 point, Your Honor. And these are just, you know,  
11 three preliminary questions, and I have about four  
12 more questions after that on this issue. But it  
13 goes to -- it goes to the, you know, what is driving  
14 Mr. Birchfield and what drove Mr. Birchfield to --

15 THE COURT: Allegedly.

16 MR. BRODY: -- to take advantage of  
17 the --

18 THE COURT: We've made no findings.

19 MR. BRODY: Right. But to, you know,  
20 join forces with Mr. Conlan over a period of over  
21 six months last year to engage in strategies that he  
22 knew and Mr. Conlan knew were adverse to what J&J  
23 preferred.

24 THE COURT: I will sustain the  
25 objection with regard to the litigation from the

1 agreements.

2 MR. BRODY: Fair enough.

3 THE COURT: On relevance.

4 MR. BRODY: Fair enough.

5 BY MR. BRODY:

6 Q. So, Mr. Birchfield, the -- your  
7 position is that -- first of all, you couldn't have  
8 hired Jim Conlan to be a lawyer at Beasley Allen to  
9 work on the talc cases, right?

10 A. I never made -- I mean, never made  
11 any effort to hire him. I mean, that's the whole  
12 point. I mean, he came to us as an vendor.

13 Q. But you -- you couldn't have done  
14 that, right?

15 A. Wouldn't have -- would not have done  
16 that, because if we're going to hire him, we would  
17 have found out more about his involvement, the  
18 length of this work. And at that point, we would  
19 not have hired him.

20 Q. I'm -- I'm kind of struggling with  
21 your answer. Are you telling me you think there  
22 might be a circumstance where it would be okay to  
23 hire somebody who had been outside counsel for your  
24 opponent to work on the same matter?

25 A. Not without a waiver.

1 Q. Huh?

2 A. Not without a -- no, I would not.  
3 What I was saying is, you know, that what has come  
4 out in this courtroom was much different than  
5 anything I ever knew, because Jim Conlan was working  
6 behind the scenes. The only thing that I knew was  
7 what Jim Murdica had told me, and that was that he  
8 had worked with an FCR on a proposal that Jim  
9 Murdica and I were working together to try to get  
10 the Imerys TCC to sign off on.

11 Q. And we've -- we've covered that. I  
12 don't want to -- I don't want to go back to that.  
13 But you acknowledge, no matter what his role was, if  
14 he's outside counsel for J&J on the talc litigation,  
15 you can't hire him as a lawyer at Beasley Allen to  
16 work on the talc litigation, right?

17 MR. POLLOCK: Objection; asked and  
18 answered.

19 THE WITNESS: Agreed.

20 THE COURT: I'll permit the question.  
21 But go ahead.

22 BY MR. BRODY:

23 Q. And you can't hire him as an expert  
24 witness, right?

25 A. I would not hire him as an expert



1 witness, no.

2 Q. Right. But you couldn't. The ethics  
3 rules would prohibit you from doing that, right?

4 A. Right.

5 Q. Right. But just -- your position is  
6 that entering into a relationship with him as CEO of  
7 Legacy to design a resolution of the talc litigation  
8 was just fine, right?

9 MR. POLLOCK: Objection.

10 THE WITNESS: This proposal --

11 THE COURT: Hold on.

12 MR. POLLOCK: To design a resolution,  
13 because that -- we're going to see this in briefs, I  
14 promise you, for months to come.

15 THE COURT: Suggests facts that are  
16 not in evidence.

17 MR. POLLOCK: Exactly.

18 THE COURT: Okay.

19 MR. POLLOCK: He can answer the  
20 question.

21 THE COURT: I think it's more of a  
22 hypothetical than a factual question. Why don't you  
23 rephrase the question, Mr. Brody.

24 BY MR. BRODY:

25 Q. Sure. Your position is that the work

1 you did with Mr. Conlan as CEO of Legacy is just  
2 fine, right?

3 A. I didn't get any confidential  
4 information from Mr. Conlan. What -- what would  
5 happen -- understanding the nature of this proposal  
6 makes that crystal clear, because if -- for this  
7 proposal to go anywhere, it has to be acceptable to  
8 J&J. They can do it without my participation, and  
9 that was a big concern.

10 But if the proposal were accepted,  
11 then Legacy is standing in the shoes of J&J. They  
12 are our adversary every -- every bit as much as J&J  
13 is now. They have all of the talc liability.  
14 That's -- that's the nature of it. So I went into  
15 -- into these discussions knowing that.

16 THE COURT: Let me ask a question,  
17 Mr. Brody.

18 MR. BRODY: Of course.

19 THE COURT: Mr. Birchfield, you said  
20 you didn't get any confidential information from  
21 Conlan regarding J&J. That's your testimony, right?

22 THE WITNESS: Yes, sir.

23 THE COURT: So to the extent that you  
24 know you didn't get any confidential information, so  
25 Mr. Conlan didn't say, "Hey, by the way,

1 Mr. Birchfield, I have this information regarding  
2 J&J," he never came to you in that with regard,  
3 right?

4 THE WITNESS: Right.

5 THE COURT: But he -- he could have  
6 told you information that he got from J&J? I mean,  
7 you're not discounting that; am I right? You  
8 wouldn't know that?

9 THE WITNESS: I wouldn't know.

10 THE COURT: You wouldn't know, if he  
11 came to you and said, "Mr. Birchfield," and I'm --

12 THE WITNESS: Yes.

13 THE COURT: -- referring to you as  
14 "Mr. Birchfield" -- "Mr. Birchfield, if you do X, Y  
15 and Z, why don't you consider that and convey that  
16 to the plaintiffs' committee."

17 To the extent he got that information  
18 from J&J, but didn't tell you that, you wouldn't  
19 know that, right? I'm not trying to set you up.

20 THE WITNESS: Right.

21 THE COURT: Unless he said, "Hey,  
22 Mr. Birchfield, this is what J&J is doing. Here's  
23 what they're thinking. I worked there for 22  
24 months. This is the information I got, X, Y and Z."

25 He could have just came to you and

1 said, "Mr. Birchfield, why don't you propose X, Y  
2 and Z to your clients and the plaintiffs'  
3 committee."

4 THE WITNESS: He did not. He did  
5 not. He did not do that. The discussion, all the  
6 discussions, you know, with Mr. Conlan were, and the  
7 other Legacy people, were focused on the -- this  
8 proposal of structural optimization and  
9 disaffiliation.

10 And so, you know, we didn't -- in  
11 that proposal, we didn't need -- we didn't need any  
12 information from them, except as to how structural  
13 optimization and disaffiliation would work. And,  
14 frankly, you know, our big concern was, What are --  
15 what are the traps? Are there minefields here that  
16 we must -- that we must avoid?

17 Legacy --

18 THE COURT: And money drove -- money  
19 drives any settlement, right? So you had 8.9  
20 billion, you got 19 billion. And so to the extent  
21 any plan would work, it's fund -- it's fund-driven.

22 THE WITNESS: It is fund-driven.  
23 Absolutely. You know, the focus, you know, from our  
24 perspective was what -- what would give our clients  
25 reasonable compensation, period. So if we -- if we

1 put together a structure, if we put together a  
2 structure and a settlement fund that would provide  
3 our clients with reasonable compensation, the common  
4 benefit will take care of itself. Other issues will  
5 take care of itself.

6 That was the goal. That was the  
7 driver, to, you know, to get a resolution plan that  
8 would be acceptable to J&J. And that's where the  
9 finality came in.

10 THE COURT: Thank you,  
11 Mr. Birchfield.

12 Judge Singh?

13 JUDGE SINGH: Nothing. Thank you.

14 THE COURT: Thank you.

15 I didn't mean to sidetrack, but I  
16 wanted to follow up with regard to that question.

17 MR. BRODY: It's quite all right.

18 BY MR. BRODY:

19 Q. Mr. Birchfield, you would agree with  
20 me that --

21 THE COURT: Hold on. Mr. Placitella  
22 has something from --

23 MR. PLACITELLA: Your Honor, someone  
24 just sent me a note that they could hear Mr. Haas'  
25 questions or information being provided to Mr. Brody

1 over the --

2 JUDGE SINGH: The mic.

3 MR. HAAS: Your Honor, I --

4 MR. PLACITELLA: So I just want to  
5 let everybody know.

6 MR. HAAS: Thank you.

7 THE COURT: Thank you,  
8 Mr. Placitella.

9 MR. HAAS: Thank you, Chris.

10 Your Honor --

11 THE COURT: And that is probably the  
12 case with regard to that transponder that's in front  
13 of you, Mr. Haas.

14 MR. HAAS: Thank you very much, Your  
15 Honor. But I am completely confident that anything  
16 I said to my counsel I have no problem sharing up to  
17 this point in this courtroom. So it's okay.

18 THE COURT: So keep that in mind.  
19 You also have with your microphones, there's a mute  
20 button so that we can't hear. And you can also, I'm  
21 going to tell you, Mr. Pollock, Mr. Brody, that the  
22 green light, if you touch it, it becomes a red  
23 light.

24 So thank you, sir.

25 MR. PLACITELLA: So pardon me.

1 THE COURT: That's quite all right.

2 I think that's important to know, and everybody  
3 needs to know.

4 MR. BRODY: I definitely didn't know.  
5 Thank you.

6 BY MR. BRODY:

7 Q. It would certainly help, if you were  
8 trying to come up with a number that J&J would agree  
9 to, to have somebody who had been on the inside,  
10 wouldn't it?

11 MR. POLLOCK: Objection; speculative,  
12 hypothetical.

13 THE COURT: No, I disagree.  
14 Objection overruled. To the extent that  
15 Mr. Birchfield understands the question and can not  
16 speculate.

17 THE WITNESS: Not at -- not at that  
18 point in time. I mean, at that point in time, by  
19 the time I first ever met Jim Conlan, we had been --  
20 we had been negotiating, started negotiations,  
21 started negotiations with Mr. Mordica in April of  
22 2020.

23 BY MR. BRODY:

24 Q. Okay.

25 A. And I had been focused on mediate --

1           Q.           I -- I'm sorry, Mr. Birchfield. My  
2 question -- my question was just if you wanted to  
3 come up with a number that J&J would agree to, it  
4 would help to have somebody who had been on the  
5 inside, wouldn't it?

6                   MR. POLLOCK: Your Honors, I  
7 understand Mr. Brody wants a yes or no.  
8 Mr. Birchfield is explaining that he already knows  
9 all this stuff, anyway. If he's going to ask that  
10 question, I respectfully beg you, let my client  
11 answer the question. Because Mr. Brody can't just  
12 do it the way he wants to do it, because he wants a  
13 short and fast, snappy answer. The truth -- we're  
14 here to get the truth. I respectfully beg that  
15 Mr. Birchfield be able to give his response.

16                   THE COURT: Thank you.

17                   If you were responding to that  
18 question, but with regard to -- more directly,  
19 though, Mr. Birchfield.

20                   THE WITNESS: At that point in time,  
21 we had a very good idea of what J&J would willingly  
22 pay under those circumstances. They put it on the  
23 table. They had -- they had done that through the  
24 -- through the \$8.9 billion, you know, proposal that  
25 they had rolled out. We had -- that was after a



1 year-long, a year-long mediation.

2 So, no. What we were looking for was  
3 a way, because the whole -- the whole idea was that  
4 J&J needed finality. They needed finality. You saw  
5 the bankruptcy plan. The bankruptcy plan would not  
6 pay, would not pay reasonable compensation to our  
7 clients. And so we were looking for a way to give  
8 J&J the finality so we could get it.

9 BY MR. BRODY:

10 Q. So I take it that's a no, you  
11 disagree, it wouldn't be helpful to have somebody  
12 who had been on the inside if you wanted to come up  
13 with a number that J&J would agree to, and so you  
14 just tossed 19 billion out there when you knew that  
15 J&J proposed 8.9?

16 A. I did not toss out the 19 billion.  
17 The \$19 billion number is Jim Conlan and Legacy's  
18 number. And that is a -- that's what he testified  
19 to. He testified as to how he got to that number.  
20 And that would be for all talc liability for all  
21 time, taking on all of J&J's talc liability.

22 That was not the number -- that's not  
23 a number for the ovarian cancer claims. The ovarian  
24 cancer claims were a piece of that overall proposal,  
25 but only a piece.

1           Q.           And you don't know whether that  
2           number is based on confidential discussions he had  
3           with J&J, do you?

4           A.           He testified that it is not, and --

5           Q.           Well, he testified to a lot of  
6           things. You don't know, do you?

7           A.           If you're suggesting that J&J had  
8           told them internally that that's the number that --  
9           I would find that surprising. But I don't have any  
10          way of knowing.

11          Q.           All right. Fair enough. Let's wrap  
12          this up.

13                        You know that on Wednesday morning,  
14          J&J announced a proposed plan of reorganization by  
15          LLT Management LLC for the comprehensive and final  
16          resolution of all claims and future claims related  
17          to ovarian cancer arising from cosmetic talc  
18          litigation against it and its affiliates in the  
19          United States, right?

20          A.           Yes.

21          Q.           And you know that the announced plan  
22          provides for a three-month solicitation period  
23          during which ovarian claimants are informed of its  
24          terms and will have the opportunity to vote for or  
25          against the plan, right?

1           A.           I understand that that's a provision  
2           of the proposal.

3           Q.           And that was announced on Wednesday  
4           morning, right?

5           A.           Yes.

6           Q.           By 8:26 a.m. on Wednesday morning,  
7           the same day, you had issued a press release stating  
8           your opposition to it, right?

9           A.           Yes.

10          Q.          And on -- you will probably remember  
11          this, but I'm quoting what was attributed to you in  
12          that press release. "We believe any bankruptcy  
13          based on this solicitation and vote will be found  
14          fraudulent and filed in bad faith under the  
15          Bankruptcy Code. On behalf of our clients who  
16          deserve better, we are blowing the whistle on this  
17          cynical legal tactic and will resist it at every  
18          turn."

19                      That was your statement, right?

20          A.          Yes.

21          Q.          And Ms. O'Dell also made a statement  
22          in opposition, correct?

23          A.          Yes.

24          Q.          And she was quoted as saying, "The  
25          company is afraid of a legitimate vote among those

1 who are truly sick and the families of the deceased  
2 who have been battling J&J's obstruction and bad  
3 faith for years and who are supported by numerous  
4 scientific studies showing that talc contains  
5 asbestos and other known cancer-causing  
6 ingredients."

7 That's what Ms. O'Dell stated, right?

8 A. Yes.

9 Q. So you are both out in the media  
10 resisting J&J's latest plan to resolve its talc  
11 liabilities, right?

12 A. Yes.

13 Q. You even sent an open letter to the  
14 legal community on the same day, right?

15 A. That's right.

16 Q. And you did that under the Mass Torts  
17 Made Perfect organization logo, didn't you?

18 A. It was a joint letter with Mike  
19 Papantonio.

20 Q. And you don't just want to, as you  
21 stated there, you don't merely want to challenge  
22 J&J's proposed resolution as filed in bad faith,  
23 although, frankly, nothing has been filed, as you  
24 indicated, but you also want to try to galvanize  
25 claimant opposition to J&J's plan, right?

1           A.           Yes.

2           Q.           And you're urging people to be united  
3 in opposition to the J&J plan, right?

4           A.           Yes.

5           Q.           So, I mean, really, nothing has  
6 changed since last summer when you were opposing the  
7 J&J LTL 2 plan; you're still opposing the way in  
8 which J&J wants to resolve these claims, right?

9                       MR. POLLOCK: Objection, Your Honor.  
10 Again, relevance. What does the challenge to a plan  
11 today have to do with a question of disclosure a  
12 year ago? I don't see any connection.

13                      MR. BRODY: Your Honor, he answered  
14 the question "yes," and that was my last question.

15                      MR. POLLOCK: Your Honor, I still  
16 object to it. I, frankly, I don't know what --  
17 Mr. Brody said he would be done in half an hour.  
18 Now it's now two hours. At this rate, we'll be here  
19 all day.

20                      THE COURT: I'm sustaining the  
21 objection.

22                      MR. BRODY: That's fine. I have  
23 nothing further.

24                      THE COURT: Thank you.

25                      Judge Singh, do you want to take a

1 break?

2 JUDGE SINGH: Yeah, we can take a  
3 break.

4 THE COURT: Okay. May we take 10  
5 minutes, everyone?

6 MR. POLLOCK: That's fine, Your  
7 Honor. What time would you like to reconvene?

8 THE COURT: 25 after 11. I'm using  
9 that clock. I know we all haven't synchronized, but  
10 we'll take 10 minutes.

11 (A recess was taken.)

12 THE COURT: Thank you. Please be  
13 seated.

14 Mr. Birchfield, come on back. You're  
15 still under oath, sir.

16 THE WITNESS: Yes, sir.

17 THE COURT: And Mr. Pollock, you have  
18 some questions?

19 MR. POLLOCK: I do, Your Honor --  
20 Honors. I apologize.

21 THE COURT: We're going to wait for  
22 Mr. Brody. Okay.

23 MR. POLLOCK: It would be so much  
24 faster without him.

25 MR. BRODY: Apologies.

1 THE COURT: It's quite all right.

2 Just for the record, you were pretty  
3 close to our time. But go ahead, Mr. Pollock.

4 MR. POLLOCK: Yes, Your Honor.

5 - - -

6 REDIRECT EXAMINATION

7 - - -

8 BY MR. POLLOCK:

9 Q. Mr. Birchfield, what I would like to  
10 do is start with the --

11 MR. POLLOCK: And Your Honors, this  
12 goes to the question as to whether Mr. Conlan had  
13 significantly -- had significantly harmful  
14 information. Yuna. So that's what I'm focused on  
15 here.

16 BY MR. POLLOCK:

17 Q. Mr. Birchfield, can you please walk  
18 me through what Beasley Allen first -- when did it  
19 first become involved in talc litigation against  
20 J&J?

21 A. It began in 2013. In 2013, you know,  
22 is when we -- when we opened our first case and  
23 began investigating the talc issues against J&J.

24 Q. And do you know what that first case  
25 was, by chance?

1 A. I don't.

2 Q. And do you know when they had their  
3 first verdict?

4 A. Okay. So the first trial was in  
5 2016. In February of 2016, we had the Fox trial.  
6 That was a \$72 million verdict.

7 Q. And is there another one called  
8 Ristesund, R-I-S-T-E-S-U-N-D? Have you heard of  
9 that one?

10 A. Ristesund, yes.

11 Q. And when was that one, sir?

12 A. So it was in 2016, as well. So we  
13 had, in 2016, we had three, three verdicts; the \$72  
14 million verdict, a, I believe, a \$55 million  
15 verdict, and a \$70 million verdict in -- in 2016.

16 Q. And in 2000 -- was Leigh O'Dell ever  
17 appointed as co-lead of the MDL?

18 A. Yes.

19 Q. When did that occur?

20 A. That would have been in 2016, as  
21 well. I believe it would be December of 2016.

22 MR. POLLOCK: I'm going to skip a few  
23 just for brevity, Your Honors.

24 Q. Slemp, there's a matter called Slemp.  
25 Have you heard of that one?



1 A. Yes.

2 Q. What was Slempp?

3 A. Slempp was an ovarian cancer trial. I  
4 believe that was a \$110 million verdict.

5 Q. And do you know approximately what  
6 year that was?

7 A. I believe that was 2017. Three in --  
8 in 20 -- in 2016, we had three verdicts, three  
9 favorable plaintiffs' verdicts. And then in the  
10 beginning of 2017, we had a Daniels case that was a  
11 defense verdict. And then we had the Slempp -- Slempp  
12 trial, ovarian cancer trial. I believe that was a  
13 \$110 million verdict. And then those cases were --  
14 those cases, the verdicts were vacated based on the  
15 Bristol-Myers-Squibb case out the Supreme Court.  
16 The verdicts were vacated on personal jurisdiction,  
17 but those cases are -- those cases still ready to be  
18 retried.

19 I'm sorry.

20 Q. Were there any Daubert challenges,  
21 Iqbal, Twombly, Kuhmo Tire challenges as to expert  
22 qualifications during the course of these trials?

23 A. Yes. I mean, every -- I mean, every  
24 trial, you know, you would have -- maybe not  
25 Daubert. I mean, you had -- I mean, in -- in --

1 preceding these trials, you know, the courts would  
2 weigh under the local state standard. So, in New  
3 Jersey, it would be Kemp. In California, which  
4 was --

5 THE COURT: Accutane now.

6 THE WITNESS: Accutane now? Okay.  
7 All right.

8 THE COURT: Just for our record, Kemp  
9 Accutane Daubert.

10 MR. POLLOCK: Thank you, Your Honor.

11 THE WITNESS: There is Sargon. You  
12 know, there was a -- in 2017, after the Slemper case,  
13 we have tried the Echeverria case in California.  
14 There was a Sargon hearing, you know, there.

15 BY MR. POLLOCK:

16 Q. What's a Sargon hearing? I missed  
17 that one.

18 A. It's the -- it's the equivalent of  
19 the Accutane here, but in California. The state  
20 court equivalent of a Daubert, you know, proceeding.

21 Q. And can you describe for the Court  
22 the team, the Beasley Allen team that works on --  
23 what's your role within the talc stuff that you do?  
24 What's your title?

25 A. I'm the section head for the mass

1 tort section. Our firm is divided into -- into  
2 sections, and I head up our mass tort section. And  
3 so we have a, you know, a pretty -- pretty large  
4 team, 30 something lawyers, you know, in the mass  
5 tort section, and a, you know, a staff, a large  
6 staff.

7 And so I'm -- I manage, I supervise,  
8 and -- and, you know, since 2020, I have been  
9 hands-on in the, you know, in the talc. Before  
10 that, I didn't -- I was not the one that tried any  
11 of those cases, so -- and so Ted Meadows, you know,  
12 tried, and Jerry Beasley, our senior partner, tried  
13 the first Fox case in 2016.

14 But, I mean, I would be -- I was  
15 involved and learning the case, learning the  
16 details, I mean, and supervising, but I was -- I had  
17 other things prior to April of 2020.

18 And at that point, at that point, I  
19 had my first meeting, you know, with Mr. Murdica,  
20 who testified here. And at that point, you know, we  
21 began, you know, pursuing resolution. So we had a  
22 number of -- a number of trials we had gone through.

23 I'm sorry, I'll stop. But we had  
24 gone through a number of trials up to that point.  
25 My role prior to April 2020 was more of a

1 supervisory, you know, role within the section.

2 Q. Is there -- did there come a point in  
3 time when you weren't just representing clients for  
4 Beasley Allen, but you also had a leadership role  
5 among the torts bar at large?

6 A. Yes. That would have been -- well, I  
7 mean, officially, it would have been in the MDL. So  
8 the -- before, before 2016, there was no -- there  
9 was no MDL formed. Once the MDL was formed, Judge  
10 Wolfson appointed Leigh O'Dell, my law partner, as  
11 co-lead, along with Michelle Parfitt from Ashcraft  
12 Gerel. She appointed the, you know, the committee.

13 And so Leigh and Michelle, Ms. O'Dell  
14 and Ms. Parfitt, served as co-lead counsel. And so  
15 we had a leadership role nationally in that regard.

16 There's coordinated litigation here  
17 in New Jersey, and, you know, Ted Meadows and  
18 Mr. Placitella and Mr. Golomb, you know, were  
19 instrumental there. I don't think there's an  
20 official order, just -- just that role.

21 Q. And do you, do you, as chair of the  
22 department, do you view your role as of the time --  
23 I think you mentioned 2016 -- that your role  
24 vis-a-vis the other plaintiffs' law firms, that you  
25 owe their clients a duty of loyalty, too; that

1 you're there to protect their joint interests?

2 A. Yes. I mean, our view, our view --  
3 and when I say "our view," it's shared by  
4 Ms. O'Dell, and it's our -- our firm approach. And  
5 there is -- there are differences in how, you know,  
6 how firms would approach the leadership roles in  
7 MDLs.

8 But, I mean, my first -- my first MDL  
9 leadership role was in Vioxx before Judge Eldon  
10 Fallon and, you know, in that -- it was -- it was  
11 instilled then. You know, you've got a duty to all  
12 the plaintiffs. There are -- there are -- there are  
13 a number of times when leadership have resolved  
14 their own cases, and that could be -- you know, we  
15 would never abandon our role as leadership. We have  
16 a fiduciary duty, in my view, to all of the, you  
17 know, all of the plaintiffs that are pending in the  
18 MDL, the lawyers and the plaintiffs.

19 Q. I would like to address to the Court  
20 what you learned, and I'm going to skip all the way  
21 up to 2021. I'm going to go right to this point  
22 right here, when Mr. Conlan joins Faegre. So let's  
23 call it sometime in 2020. I would like you to  
24 briefly describe what you learned.

25 MR. POLLOCK: And the premise, Your

1 Honors, for my question is, What did Mr. Conlan know  
2 that he didn't already know? That's really what I'm  
3 getting to. All right?

4 Q. So, Andy, if you could walk through,  
5 what did you learn from 2013 to 2020 regarding the  
6 natures of the claims, the types of claims, value of  
7 the claims, matrices? Just go for it.

8 THE COURT: I think Mr. Brody wants  
9 to address the Court, Mr. Pollock.

10 MR. BRODY: Well, first, I'm going to  
11 object to the question as calling for a narrative.  
12 You know, it's -- you know, what did you learn about  
13 six, seven, eight, nine things. I think the  
14 question should be more focused.

15 You know, generally, I'm all in favor  
16 of counsel framing things for the Court when they're  
17 going to go into a certain area and ask questions,  
18 but I think what we're hearing from Mr. Pollock is  
19 argument, and I think that it's improper to offer  
20 argument during the examination of Mr. Birchfield.

21 So I would object to the continued  
22 framing arguments.

23 THE COURT: Could you rephrase the  
24 question --

25 MR. POLLOCK: Of course.

1 THE COURT: -- Mr. Pollock with  
2 regard to what you're exactly -- the testimony you  
3 want to elicit from Mr. Birchfield.

4 MR. POLLOCK: Absolutely.

5 BY MR. POLLOCK:

6 Q. Mr. Birchfield, the challenge here  
7 today is that you obtained information that was  
8 confidential to J&J and that you got it from  
9 Mr. Conlan. That is the allegation that's been  
10 brought against you.

11 I would like to know, what did you  
12 know before, regarding these claims, what did you  
13 know before you met Jim Conlan?

14 A. Before I ever met Jim Conlan, we had  
15 extensive, extensive knowledge and understanding  
16 about the nature of these claims, as well as the --  
17 as well as what J -- how J&J would evaluate these,  
18 you know, these claims.

19 And we gained that because there is  
20 -- there, in my view, you know, there -- you learn  
21 to strengthen the weaknesses of the cases through  
22 trials. And so we had tried multiple, multiple  
23 trials before -- before we ever -- before I ever  
24 met, you know, Jim Conlan.

25 Before I ever met, you know, Legacy,

1 Jim Conlan, or anyone at Legacy, we had gone through  
2 multiple Daubert-like, you know, hearings. We had  
3 gone through the MDL in front of Judge Wolfson. So,  
4 I mean, that was extensive briefing and expert  
5 reports and live testimony. And we had the, you  
6 know, we had the Daubert decision, you know, from  
7 Judge Wolfson.

8 We had gone through, you know, a  
9 similar type proceeding in front of Judge Nelson  
10 Johnson, both here and up on appeal to the -- to the  
11 Appellate Court.

12 And then, beyond that, we, you know,  
13 we had -- I had extensive negotiations, you know, on  
14 behalf of, you know, ovarian cancer claimants with,  
15 you know, with Jim Murdica. And so I had, I believe  
16 -- I believe the first matrix, you know, that I  
17 provided, you know, to -- to J&J through Jim  
18 Murdica, I believe that was as early as May of 2020.

19 And so we had -- we had been  
20 evaluating, you know, how, how can -- how can we put  
21 together a structure for global resolution. We had  
22 been working on that for a long time, a long time  
23 before I ever met, you know, anyone -- Jim Conlan or  
24 anyone from, you know, from Legacy.

25 You know, we -- we negotiated. We



1 negotiated, you know, toward a, you know, private  
2 global -- when I say "private," I mean through the,  
3 you know, through a global deal for all claimants,  
4 but not part of any bankruptcy. We did that.

5 And then there was a proposal that  
6 was a bolt-on to the -- to the Imerys bankruptcy.  
7 And so we had negotiated that.

8 All of that, all of that requires,  
9 you know, an in-depth understanding of the nature of  
10 the claims. What are, you know, what are truly  
11 compensable claims, what are the claims that are  
12 supported by the -- by the science and the medicine,  
13 and what's not.

14 It also requires an understanding of  
15 how many claims. What is the -- what's the total,  
16 you know, universe of claims. You know, you need to  
17 know that, unless it's just purely a, you know, a  
18 pay-as-you-go type proposal. You need to know what  
19 are the number of claims.

20 And so we had -- we had worked very  
21 closely with, you know, firms across the country to,  
22 you know, to assess that, to get a handle on what  
23 the total number of claims, you know, were. All of  
24 that was done, all of that was done before -- before  
25 J&J filed its first bankruptcy.

1                   Then, when J&J filed its first  
2     bankruptcy in October of 2021, at first -- at first,  
3     I, on behalf of, you know, our ovarian cancer team,  
4     I was pushing -- I was pushing for resolution in --  
5     in that bankruptcy, in that bankruptcy context. And  
6     now I look back and -- and I see that that was, you  
7     know, that that was a mistake.

8                   We had, at that point, you know,  
9     there was meso -- there were mesothelioma lawyers  
10    that were representing clients on the TCC, and they  
11    were saying, No, you -- you can't, you can't. We've  
12    had experience with bankruptcy. We've had  
13    experience with the Texas Two-Step. It -- it will  
14    not work. They will -- you cannot get reasonable  
15    resolution in the bankruptcy context.

16                  I resisted that and I was pushing for  
17    resolution in the bankruptcy context at the  
18    beginning of LTL 1.

19                  But then after we got -- so, through  
20    that process, you know, in the -- the LTL 1, you  
21    know, was filed in North Carolina. It was  
22    transferred to Judge Kaplan here in New Jersey.  
23    Judge Kaplan, you know, urged mediation. That  
24    didn't -- that didn't happen, I mean, not officially  
25    before the motion to dismiss hearing. But we -- but

1 we did engage. We were trying to reach a  
2 resolution.

3 Once Judge Kaplan denied the motion  
4 to dismiss, when he denied that motion to dismiss,  
5 he ordered mediation, and he ordered -- he ordered  
6 Judge Joel Schneider and Gary Russo to serve as  
7 mediators. And so --

8 THE COURT: And I think that's, you  
9 know -- I'm sorry, Mr. Birchfield. I think that  
10 gets us to where we were --

11 THE WITNESS: Sure.

12 THE COURT: -- to the crux of your  
13 question; what did he know at that time frame.

14 MR. POLLOCK: Correct. I think  
15 you're -- I think you're right, Your Honor.

16 BY MR. POLLOCK:

17 Q. Imerys. I know that everyone else  
18 probably knows more than I do. What was the Imerys  
19 bankruptcy?

20 A. Imerys -- Imerys is a mining company.  
21 They were a supplier to J&J. So Imerys and Cyprus  
22 were suppliers. They both filed bankruptcies. The  
23 Imerys bankruptcy was filed in, I think, February of  
24 2019. And, you know, and Beasley Allen, Leigh  
25 O'Dell, you know, Ted Meadows, we served -- we

1 represented a member of that Imerys tort claimants  
2 committee, as well. There's a Cyprus -- Cyprus  
3 filed bankruptcy, as well, but that was primarily  
4 for mesothelioma. We didn't -- we did not have a  
5 client on that committee.

6 Q. During the course of the Imerys  
7 bankruptcy, did you have discussions with J&J  
8 regarding potential resolution of the talc claims?

9 A. We did.

10 Q. And over what time period did you  
11 have those discussions?

12 A. I believe that would have been in --  
13 it would have been the fall of 2020 and up through  
14 the spring of 2021, roughly.

15 Q. And the -- were there -- was there a  
16 settlement matrix that you ever shared with anyone  
17 at that point in time?

18 A. Yes. I mean, there was a settlement  
19 matrix that was, you know, that was developed and --  
20 as part of that process, as well.

21 Q. And when you say the settlement  
22 matrix was developed, is this something that you  
23 worked on with the talc claimants committee?

24 A. Yeah, I mean, it is something that we  
25 -- that was, you know, presented, you know, to the,

1 you know, to the tort claimants committee. I'm just  
2 -- I'm just hesitant here because there are very,  
3 very strict rules about what's -- what goes on  
4 within the, you know, tort claimants committees in  
5 these bankruptcies.

6 Q. Fair enough. On the -- I lost my  
7 train of thought. Sorry. During the course of time  
8 you were working on Imerys, did you gain insight as  
9 to what you believed were the settlement values that  
10 were -- that J&J was looking for? Do you know  
11 anything about their settlement position?

12 A. Well, yes. I mean, through the --  
13 through the course of, you know, through the course  
14 of negotiations, you know, we were given, you know,  
15 pretty, you know, clear picture of at least what  
16 they were, you know, they were saying that they  
17 would be willing to pay at that point.

18 Q. And if I were to pick the time, I  
19 have on the calendar up here, the clock up here,  
20 2019 roughly is when Imerys starts, and they have  
21 2024 as Imerys ongoing. I don't know if that's  
22 accurate.

23 Were the number of claims, as you  
24 understood them, changing, the number of claimants  
25 and the number of types of claims changing between

1 2019 and 2023 in Imerys?

2 A. I'm having a little -- a little  
3 difficulty, you know, teasing out, you know,  
4 Imerys --

5 Q. Sure.

6 A. -- because, you know, because I can't  
7 really speak to Imerys on --

8 Q. Let me try to -- try it over again,  
9 and ask a different question because I probably  
10 screwed it up.

11 I apologize, Judges. I'm not a talc  
12 guy. I just -- I live a decent life. I have not  
13 done this talc claim, so I apologize if I botched  
14 it.

15 Let me make the question broader. If  
16 I look at the number of talc claims regarding J&J  
17 just generally between 2019 and 2022-23, do you  
18 believe there was a change in the number and value  
19 of those claims?

20 A. There was a -- there was a  
21 significant, you know, change in the, you know, in  
22 the number, in the total number of claims. I mean,  
23 that -- that is true. And, I mean, there are -- you  
24 know, there were factors that, you know, any lawyer  
25 would weigh in, you know, impacting, you know, the

1 value or a reasonable settlement value, you know, of  
2 those claims. Those factors would -- would change,  
3 you know, over, you know, over time, as well.

4 But, I mean, over the course of, you  
5 know, over the course of this litigation, over the  
6 last, you know, the ten years, there have been,  
7 there have been, you know, milestones that have  
8 impacted the, you know, the total number of -- the  
9 total number of claims.

10 Q. So if we could go to something that  
11 I'm dying to get into because I love numbers. We're  
12 going to go to Exhibit 7, sir. This is one that  
13 Mr. Brody was asking you about. Let me know when  
14 you're there.

15 A. I'm there.

16 Q. And Exhibit 7 has a proposal from  
17 James Conlan, Doug Dachille, and John Gasparovic,  
18 and I'm looking at Plaintiff's -- Plenary Hearing  
19 66.

20 A. Okay.

21 Q. And that has a matrix then at the  
22 end, at 67.

23 A. Yes.

24 Q. So I want to focus, first of all, on  
25 the letter.

1 Am I correct in understanding that  
2 you had not seen this document nor a draft of it  
3 until you -- this litigation began?

4 A. That's right. I mean, the first time  
5 I saw this letter was when this motion was filed.

6 Q. And if we go back to the email that  
7 Mr. Brody was asking you about, which is Exhibit 4,  
8 am I -- is it fair to -- am I correct in  
9 understanding that you did not get a cc on this  
10 document, either?

11 A. I did not.

12 Q. Now, if we -- if we go to -- and I'm  
13 worried about timing here, but we'll get into it.  
14 On Exhibit 6, which is Plenary Exhibit -- it's the  
15 Exhibit 7, it's the last page of the document. It's  
16 the matrix there.

17 Could you walk us through -- first of  
18 all who created this matrix?

19 A. I did, in -- in conjunction with the  
20 leadership committee on the talc claims.

21 Q. So there's been a lot of questions,  
22 comment about the matrix. There's been oral  
23 argument about the matrix. Since you're the author  
24 of it, you might be the one to say.

25 What -- can you explain this Court to



1 the matrix [sic], what is this telling -- what is  
2 this telling the receiver? What is it -- what are  
3 you trying to describe?

4 A. And so this, this -- the way that  
5 this would work is that if a -- and this is -- this  
6 is not, you know, uncommon. We've developed, you  
7 know, similar type, you know, matrices in other --  
8 other litigations, you know. We developed a similar  
9 one in Vioxx in the early, you know, mid 2000s.

10 But the way that this would work is a  
11 client -- claimant, client, would -- would be able  
12 to identify, okay, when was I diagnosed, how old was  
13 I when I was diagnosed. And so -- and then what was  
14 the, you know, what was the injury, what stage. Was  
15 I diagnosed with stage 4. You know, if I was  
16 diagnosed with stage 4 when I'm 55 years old, then  
17 you would -- you would see, you know, that that is  
18 -- that would -- the allocation there would be  
19 500,000. 531,995. That -- that's how it would  
20 work.

21 And then, you know, there would be --  
22 a term sheet would provide, you know, qualification  
23 criteria, you know, and -- and that's a -- that's a  
24 key component, and that's -- that is a -- that's a  
25 primary, a significant reason, you know, for our

1 opposition, and especially our opposition to this,  
2 you know, this last proposal.

3 What we would base our, you know, any  
4 -- any settlement on would be the, you know, the  
5 claims that are -- the claims that are supported by  
6 the medicine and the science for the ovarian cancer,  
7 you know, claimants. The type of cancer, the  
8 subtypes that are supported by the science. You're  
9 talking about, you know, the epithelial ovarian  
10 cancer. It can be the fallopian tube or peritoneal  
11 cancers. All the same.

12 But if you meet that criteria, you  
13 have the appropriate, you know, subtype, then you  
14 would be qualified here. And so you -- that's how  
15 the matrix would work.

16 Q. So when I was talking to Mr. Conlan,  
17 I think I talked about peanut butter and chocolate,  
18 Reese's cups, because it was almost lunch. The --  
19 part of the deal in Exhibit 7 is a Jim Conlan thing,  
20 and the attachment is an Andy Birchfield thing.

21 Is that -- do you believe that's a  
22 fair statement?

23 A. Yes. I mean, the matrix -- the  
24 matrix is -- is -- that's -- that's definitely us.  
25 You know, I mean me on behalf of the -- of the team,

1 the ovarian cancer team.

2 Q. Did you ever haggle --

3 THE COURT: Let me ask a question,  
4 Mr. Pollock, I apologize.

5 MR. POLLOCK: Yes, of course.

6 THE COURT: So the total funding of  
7 this matrix is \$19 billion?

8 THE WITNESS: No, sir.

9 THE COURT: What's the total funding  
10 of the matrix, if you know?

11 THE WITNESS: Looking at -- well, so,  
12 in order to determine that, I mean, I can tell you  
13 -- I can tell you what --

14 THE COURT: But it's more than \$19  
15 million.

16 THE WITNESS: No, sir.

17 THE COURT: \$19 billion.

18 THE WITNESS: No, sir. It would be  
19 -- it would be less than the 19 billion.

20 So, the 19 billion that -- that Mr.  
21 -- the Legacy proposal includes, that -- that is a  
22 proposal for Legacy to acquire an entity with all of  
23 J&J's talc liability for all of time. So that would  
24 include -- it would include the current ovarian  
25 cancer claims, it would include the future ovarian

1 cancer claims, it would include -- at the time that  
2 this proposal was made, it would have included the  
3 mesothelioma, present and future, it would have  
4 included the attorney generals, you know, actions.

5 And so you had the, you know, two,  
6 two states that were litigating, but you also had an  
7 ad hoc group of 42 states. So all -- you know,  
8 essentially, all the states, you know, had claims.  
9 It would have included all, all of that, any  
10 talc-related liability from J&J.

11 And so, you know, most of the -- most  
12 of those buckets are fairly easy to model. Talc, I  
13 mean, asbestos, mesothelioma, that litigation has  
14 been going on for decades, so there are easy ways to  
15 model how many claims you will have each year. It's  
16 much more difficult with ovarian cancer.

17 That's why, you know, for a Legacy  
18 proposal, they needed -- they needed information  
19 from us. We didn't need information from them.  
20 They needed information from us.

21 THE COURT: Thank you.

22 I wanted -- I apologize. I didn't  
23 want to get too far afield because I wanted to stay  
24 -- I wanted to make sure my question was addressed  
25 on the current question that you were posing.

1 MR. POLLOCK: Your Honors, this is  
2 your courtroom, and I respect that, and we're here  
3 to answer your questions. You're the audience, so  
4 we're here to -- you can jump in any time you want.  
5 BY MR. POLLOCK:

6 Q. Is it fair to say that you were --  
7 you never haggled with Jim Conlan over the values in  
8 your matrix; your values are your values?

9 A. That is -- that is true. I mean,  
10 this is a -- this is the product of a matrix that --  
11 this wasn't our first. You know, this wasn't our  
12 first matrix. This wasn't our opening demand in  
13 this litigation.

14 Before we got to this, you know, this  
15 matrix, it had been compromised -- we had  
16 compromised from -- you know, through two rounds of  
17 mediation. I mean, to some extent, J&J really  
18 didn't engage in the mediation in LTL 2, but we had  
19 engaged in negotiations through LTL 1, and then  
20 even, you know, following the dismissal.

21 So, and as I mentioned earlier, we  
22 had -- we had -- we had put together a matrix. We,  
23 the ovarian cancer, you know, team, had put together  
24 a matrix very similar to this, and a term sheet in  
25 March of 2023 that we offered to present to J&J in a

1 meeting with Mr. Haas and Ms. Forminard, their  
2 general counsel. And -- but they declined that  
3 meeting. But that was put together. This matrix is  
4 -- it's a compromised matrix through years of  
5 negotiation, but this was our matrix.

6 Q. To put a point on it, you weren't  
7 compromising with Jim Conlan?

8 A. No, no, we were not. We were not  
9 haggling, we were not discussing, we were not  
10 negotiating the matrix.

11 Q. So to quote from the language of RPC  
12 1.6, first line, "A lawyer shall not reveal  
13 information relating to representation of a client  
14 unless the client consents," and it does go on from  
15 there.

16 Under oath, to the best of your  
17 knowledge and belief, at any point in time, did  
18 Mr. Conlan ever reveal to you any information that  
19 he had learned while at J&J?

20 A. No.

21 Q. Sitting here today, I recognize it's  
22 impossible to look behind the black screen of what  
23 Mr. Conlan learned during the course of his  
24 representation of J&J at Faegre. Is there anything  
25 you can think of that he would have learned, having

1 heard his testimony, that was conceivably relevant  
2 to your position of representing clients in Beasley  
3 Allen?

4 A. Not at that point in time. By the  
5 time I met him, there would have been -- there would  
6 have been nothing that I can think of.

7 Q. Have you seen a single document,  
8 record, anything here that Mr. Conlan shared any J&J  
9 confidences with you?

10 A. No.

11 MR. BRODY: I'm going to object to  
12 that, Your Honor. Really, he's asking for an  
13 opinion on the evidence.

14 THE COURT: Are you asking for an  
15 opinion or a fact, Mr. Pollock?

16 MR. POLLOCK: I'm asking for the  
17 factual question. He's being accused of having  
18 received information --

19 THE COURT: To the extent he knows.

20 MR. POLLOCK: And he said he did not.

21 THE COURT: Right.

22 Mr. Brody?

23 But I think the Court's questions  
24 earlier on the basis of your questions, Mr. Brody,  
25 is, you know, candidly, he -- he may not know.

1 MR. BRODY: Exactly. Exactly, Your  
2 Honor.

3 THE COURT: So his testimony is "no."

4 MR. POLLOCK: We can address this  
5 later. I think his testimony is more that. I think  
6 it's, "I know I didn't receive anything," and it's  
7 also, "No, I can't think of anything that he could  
8 have shared with me that was relevant."

9 Because -- you know, let's -- so  
10 let's -- let me drill down on this a little bit, if  
11 you would.

12 THE COURT: Go ahead.

13 BY MR. POLLOCK:

14 Q. He's at Faegre until -- I can't  
15 remember, sorry.

16 THE COURT: March 2023.

17 BY MR. POLLOCK:

18 Q. March '23. So during -- can you  
19 describe briefly for the Court the changes in the  
20 number of tort claims, asbestos claims that are out  
21 there between June 2020 and February -- I'm sorry,  
22 March 2023. Can you describe what the evolution or  
23 change is, if there's any?

24 A. Well, yes, there were -- there was a  
25 significant -- I mean, there was a significant



1 increase in the total number of claims. And I am --  
2 I mean, I apologize. This is -- this is just --  
3 there's so much that's mixed in here, and I just --  
4 I want to be -- I want to be clear.

5 From our perspective, you talk about  
6 two different things. You talk about the total  
7 number of compensable claims versus the total number  
8 of claims. And so to answer your question, I really  
9 need to know what are you -- what are you asking me.

10 Q. Let me break it out.

11 A. Okay.

12 Q. That's a fair comment.

13 So at what -- and you know the dates  
14 better than I do. LTL was filed, according to me,  
15 on October 2021. LTL is dismissed on January of  
16 2023. Does that sound about right?

17 A. Yeah. The Third Circuit -- the Third  
18 Circuit issued its opinion on January the 30th,  
19 2023.

20 Q. Okay.

21 A. It was the mandate issue that was  
22 technically dismissed by Judge Kaplan on April the  
23 4th of 2023.

24 Q. And so -- and you live in this world;  
25 I visit it. The number of claims out there, did

1 that change significantly as the result of the Third  
2 Circuit's rejection of the LTL plan?

3 A. I wouldn't say that there was -- I  
4 wouldn't say that there was a significant number of  
5 change, changes as a result of the Third Circuit. I  
6 mean, there were -- along the scope of this  
7 litigation, you know, there had been some key events  
8 that have, you know, caused spikes in the number of  
9 claims, in the number of claims -- and in the number  
10 of claims, you know, filed. And, you know, some  
11 were, you know, were verdicts. You know, some were,  
12 you know, the, you know, the US Supreme Court's  
13 decision in Ingham, you know, the Daubert rulings.

14 And, but the biggest, the biggest,  
15 you know, spike in the total number of claims came  
16 as a result of the, you know, the LTL filing. And  
17 that's -- and that's -- that's a major concern from  
18 our perspective because we have -- we've always  
19 looked at, you know, the -- what are the compensable  
20 claims.

21 And so Ms. O'Dell and Ms. Parfitt,  
22 you know, as part of the MDL that communicate with  
23 lawyers, they communicated, and they have over the  
24 course of these years, indicate -- telling them, you  
25 know, this is what, you know, this is what the

1 science shows, these are the types of cases that are  
2 supported by the science, just these -- just this  
3 finite group.

4 But then, when J&J filed its second  
5 bankruptcy, they brought in all these other claims,  
6 these other gynecological cancers that are not --  
7 not supported to date by the scientific literature.  
8 You know, so cervical cancer cases, uterine cancer  
9 cases, vaginal cancer cases, you know, other types  
10 of cases. They're serious injuries; they're just  
11 not linked.

12 But the -- in the second bankruptcy  
13 and the third that is proposed, that's what --  
14 they're bringing those claims in. They're bringing  
15 those claims in and would have them vote. They  
16 wouldn't vote. And vote on the plan that, if  
17 passed, would then force these unreasonably low  
18 values on the -- on the meritorious claims, the  
19 claims that are supported by the science.

20 Q. Let me switch gears for a second  
21 here. With regard to expert, Mr. Brody intimated in  
22 the first day before Judge Porto that Mr. Conlan --  
23 he was citing a case from the District Court of New  
24 Jersey that he was an expert.

25 Did you ever retain Jim Conlan as an

1 expert?

2 MR. BRODY: I'm going to object to  
3 the characterization of my argument from January  
4 17th because it is inaccurate.

5 THE COURT: Well, you will have an  
6 opportunity to address that. I certainly know our  
7 records reflect what it is.

8 But go ahead, Mr. Pollock.

9 MR. POLLOCK: And I'm not going to  
10 quibble.

11 BY MR. POLLOCK:

12 Q. But did you ever retain him as an  
13 expert?

14 A. No.

15 Q. Did you ever seek advice from him  
16 regarding how to prosecute or pursue your claims  
17 against J&J?

18 A. No.

19 Q. A side-switching lawyer was another  
20 argument that was raised. Did you ever retain  
21 Mr. Conlan?

22 A. No. I mean, I -- from the very  
23 beginning of, you know, of any interaction with Jim  
24 Conlan or Legacy, I recognized, I recognized the,  
25 you know, the role that they would play, and they

1 would be standing in the shoes of J&J. They would  
2 be our adversary.

3 I mean, any claim, any -- the  
4 proposal that we put forward, the proposal that is  
5 in here, it is a -- it's an opt-in proposal.  
6 Clients would voluntarily choose to accept the  
7 settlement, or not. And if -- if the -- if the  
8 settlement, if they chose not to, then -- or if the  
9 settlement proposal didn't meet the threshold of 95  
10 percent, Legacy would be litigating on -- they would  
11 have full -- full responsibility, full liability.  
12 We would be litigating against them.

13 So I approached this, our team, you  
14 know, approached this with that understanding and  
15 that appreciation. They would be our -- they would  
16 be the adversary. They would be on the opposite  
17 side of the V from us, if J&J chose to sell off  
18 its -- all of its talc liability to Legacy or to  
19 whoever.

20 Q. Mr. Brody has argued repeatedly that  
21 there was an alliance between you and Jim Conlan to  
22 work against J&J. Do you agree that you were ever  
23 in an alliance with Mr. Conlan to work against the  
24 interest of J&J?

25 A. No.

1 Q. Why not?

2 A. As I just said, I mean, that -- you  
3 know, this was -- this was not -- it was not against  
4 J&J. It's against -- it's against the proposal that  
5 Mr. Haas has said is his preferred method, in his  
6 preferred bankruptcy, but is not opposed to, you  
7 know, to J&J. I think this is -- I think that  
8 getting rid of the talc liability would actually be  
9 in the best interest of J&J.

10 Q. Did you ever sit down with Jim Conlan  
11 and say, "Jim, I got an idea. We can get more money  
12 out of J&J this way." Was that ever one of the  
13 discussions you had?

14 A. No.

15 Q. And so when I look at Exhibit 4, it  
16 says from Jim Conlan to Duane Van Arsdale, Doug  
17 Dachille, Erik Haas, and Andrew White. It says:  
18 "Duane, Thank you for your efforts to evaluate our  
19 proposal."

20 Whose proposal is it?

21 A. It's Legacy's proposal.

22 Q. And that's a proposal that you had  
23 not seen before it was sent to J&J, correct?

24 A. Correct.

25 Q. And at the end, it says Doug -- "Andy

1 Birchfield, Doug Dachille, and I are prepared to  
2 meet with you."

3 Did you -- did you ever take from  
4 that sentence that the idea, or did -- was it your  
5 belief that you two were going to link up, that is,  
6 you and Legacy, were going to link up and go attack  
7 J&J and take them for everything they're worth?

8 A. No, not at all.

9 Q. What was your understanding of what  
10 the meeting was about?

11 A. The meeting was to, as I understood  
12 it, at least as, you know, the invitation to me,  
13 would I join, would be for me to talk about the  
14 matrix and how it would provide a measure of  
15 certainty, you know, that the auditors, the external  
16 auditors, Pricewaterhouse, would be able to, you  
17 know, to factor in, because they would have to give  
18 -- they would have to give sign-off on the -- they  
19 would have to sign off on the GAAP procedure, the  
20 ASC 450. They would have to sign off on that to  
21 remove the noncash charge from J&J to get the talc  
22 liability off of J&J's books.

23 And the -- and the uncertainty around  
24 the ovarian cancer case liability would be a factor  
25 that would provide a -- you know, could provide a

1 wide range. And they, as external auditors, to  
2 cover themselves, they'd have to -- they'd have to,  
3 you know, go on the highest end. This would provide  
4 some measure of certainty about what the ovarian  
5 cancer liability, you know, could -- could be  
6 resolved for.

7 And so, you know, to explain that,  
8 and for, you know, for Legacy people to explain the,  
9 you know, structural optimization and disaffiliation  
10 and how that would benefit J&J. That was, you know,  
11 that was my understanding. My role would have been  
12 to talk about the matrix, to talk about the values  
13 in the matrix, and what that would add up to.

14 And, Judge Porto, you asked me about  
15 the value, and before I -- before I got to that, you  
16 asked about is it more than the 19 billion. This --  
17 this matrix, the matrix value here, before there  
18 are, you know, before there are any reductions for  
19 risk factors based on, you know, what we know about  
20 the universe, universe of the claims, the value of  
21 this would be approximately, you know, a 300,000  
22 case average for -- for the legitimate, you know,  
23 claims.

24 The claims, when I say "legitimate,"  
25 I don't mean to disparage any cancer victim, but



1 there are -- there are cases, there are the ovarian  
2 cancer, the epithelial ovarian cancer, the certain  
3 subtypes that are supported by the science.

4 If it's limited to that, this, you  
5 know, this grid would be a 300,000 case average. We  
6 know that. We can't look at this grid and determine  
7 that, but we know, because we have worked on this  
8 for a long time, we know what a reasonable  
9 projection of how many claimants would fall into  
10 each of those boxes, so we can -- we can make that  
11 calculation of what this, you know, what this grid  
12 would -- would average.

13 And that's -- that's what we have  
14 done. But it is based on the -- a much smaller  
15 universe of the total number of claims, because J&J  
16 is now saying that the total number of current  
17 claimants is 100,000. You know, we -- we would say  
18 that the total number of claimants that meet the  
19 true qualifying criteria are significantly less than  
20 that.

21 Q. On topics -- you got questioned today  
22 regarding common benefit. Page 49, lines 10 through  
23 11, 12, Mr. Haas threw out, "the common benefit fee  
24 was not available in the plan that LTL was  
25 advancing." Page 49.

1 MR. BRODY: Page 49 of what?

2 MR. POLLOCK: Page 49 -- I apologize,  
3 Steve. It's Eric Haas' direct on March 25.

4 MR. BRODY: Okay.

5 MR. POLLOCK: You can -- you can take  
6 my copy.

7 MR. BRODY: That's all right. I have  
8 one.

9 BY MR. POLLOCK:

10 Q. "That common benefit fee was not  
11 available on the plan that LTL was advancing in the  
12 LTL bankruptcy."

13 Here it is, Steve.

14 And you were questioned about it  
15 today. Do you agree with Mr. Haas that you are not  
16 entitled to -- I'm sorry. Let me try it this way.

17 Was the driving factor for you, at  
18 any point in time, in regarding the LTL bankruptcy  
19 that you would not get common benefit?

20 A. Absolutely not.

21 Q. Why not? What's Mr. Haas got wrong?

22 A. Well, I mean, first of all, I mean,  
23 there is no principle that you cannot -- you cannot  
24 -- that a bankruptcy court cannot award common  
25 benefit fees.

1 But the thing that is so frustrating  
2 here is that, you know, that we have resisted  
3 overtures, we've resisted overtures to negotiate the  
4 common benefit fee. We're not going to do that. We  
5 are firmly committed that we will -- we will look  
6 out for the best interest of our clients. If we --  
7 if we take care of getting reasonable compensation  
8 for our clients, the common benefit fee will take  
9 care of itself. We're not going to put that ahead  
10 of the -- of the clients and clients' interest.

11 The reason -- the reason that we are  
12 opposing bankruptcy is because of the values that  
13 are being offered in bankruptcy. If you look at the  
14 proposal, if you look at the proposal that they had  
15 in LTL 2, if you look at the proposal that they  
16 rolled out on Wednesday, the -- they have a payment  
17 schedule, a payment schedule that would be \$4.34  
18 billion that would be available during the first  
19 seven years.

20 So that would be for your current  
21 claimants. Current claimants would be paid within  
22 that. They're saying there's 100,000, 100,000  
23 claimants. That would be a 43,000 [point 4]  
24 average, case average.

25 Now, there would be a range there,

1 but you cannot -- you -- at that total number, even  
2 if you were to limit it to the -- to the truly  
3 compensable cases, you cannot get to fair values for  
4 the claimants here. We know. We know because we  
5 have been looking at this for a long time.

6 What are the elements that would go  
7 into a reasonable compensation for, you know, the  
8 claimants. One, you have the medical costs. The  
9 medical costs for especially someone in their 50s or  
10 younger that's diagnosed with a stage 4, those  
11 easily exceed a million dollars just in the -- just  
12 in the medical costs.

13 And if you have -- if you look at the  
14 matrix, I mean, there -- there are stage 1 cases,  
15 and go up to 80 years old or so. The cost for  
16 treating someone, you know, that's 80 and diagnosed  
17 with stage 1, that's in the tens of thousands. It's  
18 much lower.

19 But we know that the weighted average  
20 across this -- across this entire spectrum would be  
21 about \$224,000 average case value. The numbers that  
22 they are putting forward in this bankruptcy, in  
23 their bankruptcy, you know, proposal would be truly  
24 pennies on the dollar.

25 THE COURT: And that's -- you know,

1 there's no objection by Mr. Brody, but, you know, in  
2 terms of where we are, things get a little bit far  
3 afield from your question. But certainly that's the  
4 testimony, but --

5 MR. POLLOCK: I'll move it along.

6 THE COURT: -- I want to get us back  
7 to what he knew with regard to Mr. Conlan, what  
8 Mr. Conlan may or may not have --

9 MR. POLLOCK: Your Honor, I'm going  
10 to move it along. There was one direct -- part of  
11 their theory in the case was to argue that Andy is a  
12 bad guy and he's not credible. And one of the  
13 points Mr. Haas made at direct solicitation of  
14 Mr. Brody's testimony was that the bias here is  
15 because Andy is looking for a pay day, and that the  
16 way the pay day works is that you get -- you don't  
17 get common benefit in bankruptcy.

18 So I will move it along. I do need  
19 to address it one more time because he squarely  
20 addressed it during the course of direct and I need  
21 to respond.

22 THE COURT: Yes, you do.

23 MR. POLLOCK: But I -- but I also  
24 understand loudly and clearly we want to get this  
25 done today. I think we are going to. I just need

1 -- if you give me a little bit more leeway, I'd  
2 appreciate it.

3 THE COURT: Go right ahead.

4 BY MR. POLLOCK:

5 Q. So if I -- if you go back to your  
6 binder of exhibits, page 5, exhibit -- I'm sorry.  
7 Exhibit 5, I'm looking at page 29. It's Plenary  
8 Exhibit 56.

9 A. Yes.

10 Q. Let me know when you're ready.

11 A. What page in the book?

12 Q. It's Plenary Exhibit 56, Exhibit 5.

13 A. Yes, I'm there.

14 Q. Okay. So before you go and read  
15 that, let me just ask you. Mr. Haas has argued that  
16 you admitted that you are not entitled to common  
17 benefit before. Do you agree that you ever admitted  
18 that you were not entitled to common benefit?

19 A. No.

20 Q. Let's --

21 MR. BRODY: I'm just going to object  
22 and ask for a reference.

23 THE COURT: Tell him the page number.  
24 I think it's, what, page -- line 9?

25 MR. POLLOCK: Yeah. I have lines 9

1 through 14.

2 THE COURT: I thought so. Okay.

3 BY MR. POLLOCK:

4 Q. So lines 9 through 14. "We'll come  
5 back --" this is a questioning of you in -- you were  
6 deposed before, correct?

7 A. Yes.

8 Q. And you were deposed on or about  
9 April 17th, 2023?

10 A. Yes.

11 Q. And you were asked the following  
12 question by Mr. Haas:

13 "QUESTION: We'll come back to that  
14 in a moment, but you understand as a general matter  
15 in bankruptcy, you would not be entitled to any  
16 portion of a common benefit fund that you would be  
17 entitled to outside of bankruptcy; correct?"

18 Answer, line A, answer, I have, "No,  
19 I do not."

20 Is that the answer you gave?

21 A. It is.

22 Q. And do you stand by that answer  
23 today?

24 A. Yes.

25 Q. There was also a question regarding a

1 -- bear with me one second. I'm sorry, Judge.

2 I'm going to go to -- you were handed  
3 a transcript of April 17, 2023, last time we were  
4 here, and the -- and in particular, Mr. Haas had  
5 argued during the first day that you had backed out  
6 of the deal.

7 Do you recall having that testimony  
8 from Mr. Haas?

9 A. I recall that testimony --

10 MR. BRODY: Objection;  
11 mischaracterizes the testimony.

12 THE COURT: It's not that we're going  
13 to base our evidence -- any evidence decision or  
14 make a fact finding on the question. So I remember  
15 the question, Judge Singh, I'm sure, remembers that  
16 question, because it drew a reaction, candidly, from  
17 what I recall, you know, from many individuals.

18 So why don't you synthesize the  
19 question down.

20 MR. POLLOCK: Sure.

21 THE COURT: I got -- I got your  
22 point, Mr. Brody, but --

23 MR. BRODY: Thank you.

24 THE COURT: Yeah.

25 MR. POLLOCK: I thought this might be



1 -- if you want me to go spend the time for 10  
2 minutes, I can find the exact quote. I think the  
3 sum and substance of what I just said is absolutely  
4 right.

5 Mr. Haas accused Andy of having  
6 backed out of the deal in the Imerys bankruptcy, and  
7 said, We had a deal at 3.5 million dollars --  
8 billion dollars, and you backed out. And I'm  
9 simply, since this is cross -- this is, you know,  
10 this is redirect, I'm allowed some latitude, I  
11 believe. If you want me to find the exact quote, I  
12 will find the exact quote, but it's going to take me  
13 10 minutes to do it.

14 THE COURT: Can you help, Mr. Brody?

15 MR. BRODY: Well, I think the problem  
16 is trying to build a characterization of Mr. Haas'  
17 testimony into the question. If he can just ask him  
18 questions about the deal, I think we can get to  
19 where we're going.

20 THE COURT: And that's a fair  
21 characterization. Do you remember that question  
22 with regard to, purportedly --

23 THE WITNESS: Yes.

24 THE COURT: -- the deal and something  
25 happened to that deal?

1 THE WITNESS: Yes. But there are --  
2 but there are two separate deals.

3 THE COURT: All right.

4 MR. POLLOCK: Let me -- let me run  
5 with it, Andy.

6 THE COURT: Go right ahead.

7 MR. POLLOCK: And Judge Porto will  
8 tell me if I screw it up. Okay? Is that fair?

9 THE COURT: That's fair, but --

10 MR. POLLOCK: Judges have been doing  
11 that to me --

12 THE COURT: -- I just hear the  
13 question.

14 MR. POLLOCK: Judges have been doing  
15 that to me for years. I've gotten used to it.

16 BY MR. POLLOCK:

17 Q. I'm looking at the April 17, 2023  
18 trans -- exhibit that -- transcript that Mr. Brody  
19 was kind enough to provide to us last time. So I'm  
20 going to go to page 61 of that transcript, line 9.

21 (As read): Do you recall that August  
22 and September of 2020, you had further discussions  
23 with Johnson & Johnson's counsel regarding a  
24 proposal to settle all ovarian cancer claims through  
25 the Imerys bankruptcy?

1                   And there's a whole host of  
2     objections.

3           A.       Uh-huh.

4           Q.       Apparently, they were pretty excited  
5     that day.

6                   And then it goes on again at page 63,  
7     line 24. (As read): On September 25, 2020 -- on  
8     September 5, 2020, you made a proposal to  
9     Mr. Murdica on behalf of J&J in this role -- on  
10    behalf of J&J to settle all the ovarian cancer  
11    claims, both current and future, for \$3.25 billion,  
12    right? And that's page 64.

13                   Again, a mountain of objections.

14                   And at page 74, and I'll have a  
15    question soon, (as read): And you did -- you did  
16    not represent to J&J -- this is line 3 -- in  
17    connection with this settlement offer of 3.25  
18    billion that you had spoken to each and every one of  
19    the clients regarding the proposed offer, correct?

20                   Your answer, line 8: I did not. I  
21    did not make that representation.

22                   (As read): And do you not require as  
23    an element of your offer that you and two of the  
24    other participating law firms were required to get  
25    an affidavit or to represent to Johnson & Johnson

1 that they had spoken to every one of their clients  
2 regarding their proposed -- proposal, correct?

3 There's objections.

4 Answer: We never got -- we never got  
5 to that point.

6 What did you mean when you said, "We  
7 never got to that point"? What's going on?

8 A. I mean, this was -- this was a  
9 proposal, you know, that was made. It was -- it was  
10 not for 3 point --

11 Q. Whose proposal, Andy? Help me out.

12 A. I made the proposal.

13 Q. Okay.

14 A. It was a -- it was a term sheet and  
15 -- that was made, you know, to J&J. I was  
16 questioned about that term sheet in my deposition.  
17 And it was characterized as being a \$3.25 billion  
18 proposal for all ovarian cancer claims, present and  
19 future.

20 And so -- and through that colloquy  
21 and what Mr. Brody asked me about on April the 10th,  
22 I think, when we were here, was you -- "Did you  
23 submit it?" I did submit that proposal. What I was  
24 objecting to is, it is not a \$3.25 billion proposal.  
25 That was only a portion of the settlement proposal

1 then. That -- that was it. So that was --

2 Q. So what's the total value? What's  
3 the real number and how do I break it up?

4 A. So it --

5 Q. Can you explain it to the Court,  
6 please?

7 A. Okay. That was a -- that was a  
8 proposal that would have been, testing my memory,  
9 but I believe that the total would have been --  
10 would have been 5.5 to in the 6 range, depending on  
11 how you count the present value, because it was --  
12 it was a -- it would have provided a 10-year payout,  
13 you know, for futures in that regard. But that was  
14 a proposal in September of 2020, when the total  
15 universe of claims, current claims, was much, much  
16 smaller.

17 But that's not -- that's not what  
18 Mr. -- that's not the proposal that Mr. Haas has  
19 accused me of reneging on. That was a -- and in the  
20 hearing, in the hearing last time on April the 10th,  
21 that was -- there was -- probably what you saw in  
22 the reaction was that there was a shift. And  
23 Mr. Haas didn't say on April the 10th that I  
24 reneged; he said that he received communication from  
25 the mediators that the committee would accept it.

1 And that's a different position than had been taken  
2 previously.

3 But that -- but those are two  
4 separate -- two separate proposals. There was -- I  
5 was asked in my deposition about that proposal in  
6 September of 2020. It was presented as a 3.25  
7 billion -- in my deposition, it was presented as a  
8 \$3.25 billion deal, which it was not. That's one.

9 And then later, you know, there was  
10 a -- you know, there was an Imerys proposal, and  
11 then there was a mediators' proposal. So we're  
12 talking about different -- different steps along the  
13 way, different agreements. But it was the -- it was  
14 the mediator's proposal that I was initially accused  
15 of reneging on. And then -- then it was purported  
16 that the mediators said that the committee would  
17 agree.

18 Q. If we go on to one last question on  
19 page 94, the same transcript of April 17, 2023,  
20 lines 12 to 17, let's call it.

21 "MR. HAAS: So does that clarify,  
22 Mr. Birchfield, that --

23 "ANSWER: This is the proposal. It  
24 was made in September of 2020. The world has  
25 changed since September of 2020 in multiple ways

1 that would impact the proposal."

2 And it goes on from there.

3 Can you describe for the Court --  
4 just to put this in context, this transcript is  
5 created April 17th, 2023, and it's in the  
6 bankruptcy, apparently.

7 How had the world changed between  
8 September of 2020 and April 17 of 2023?

9 A. Well, in the -- in the scope of the,  
10 you know, talc litigation, so in September of -- in  
11 September of 2020, there had not been a, you know, a  
12 bankruptcy filing. You know, there had been an  
13 effort to do a bolt-on.

14 But the -- you know, but the number  
15 of claims, the number of claims had increased, you  
16 know, dramatically between September 2020 and -- and  
17 then the time that deposition was given in April of  
18 2023. So the number of claims had shifted, you  
19 know, dramatically. Plus there was the, you know,  
20 the introduction, you know, by J&J in their  
21 bankruptcy proposal, their LTL proposal on April the  
22 4th of 2023, that these -- all these other cancers  
23 should be included, as well. So the -- so that  
24 impacted, you know, matters.

25 But perhaps the -- one of the

1 bigger -- another big, you know, shift is, you know,  
2 we had gone through -- we had gone through the, you  
3 know, the threat of a -- of a J&J bankruptcy. You  
4 know, you're going to be in bankruptcy; your claims  
5 are going to be on hold for years; and then, you  
6 know -- and, you know, clients are going to die;  
7 you're going to -- the delay is going to cause  
8 significant problems.

9 We had -- we had been through that.  
10 We had gone through LTL 1, we had gone through the  
11 motion to dismiss trial, we had gone through the  
12 appeal to the Third Circuit, and the Third Circuit  
13 had dismissed the bankruptcy for lack of financial  
14 distress.

15 So there was -- that was a  
16 significant change. We, at that point, you know,  
17 even though they had filed their second bankruptcy  
18 on the strength of the Third Circuit, there was a  
19 significant change in the risk that we thought we  
20 were facing.

21 Q. So, subject to any questions the  
22 Court may have, I have one last question for you,  
23 Mr. Birchfield.

24 You opposed the bankruptcy matter,  
25 the bankruptcy filing that J&J had proposed. Why



1 did you propose -- why did you oppose that on behalf  
2 of the talc claimants committee and Beasley Allen?

3 A. When you say "the bankruptcy filing,"  
4 you're talking about LTL 2 --

5 Q. Yes, sir.

6 A. -- their second, you know --

7 Q. Yes, sir.

8 A. -- their second bankruptcy filing.

9 The reason that we opposed, you know,  
10 that bankruptcy is because it would not provide, it  
11 would not provide reasonable compensation, you know,  
12 to the claimants. And the matrix, you know, the  
13 matrix values that we -- that we put forward, that's  
14 now public, J&J made public with this, with this  
15 filing, those reflect reasonable values for  
16 legitimate claims. And we are -- we are adamantly  
17 opposed to a bankruptcy or any -- or any supplement  
18 from a solvent defendant that would force a claimant  
19 to accept -- accept value. Even reasonable, what we  
20 would conclude to be reasonable values. They  
21 shouldn't be forced to take that.

22 But certainly, you know, certainly,  
23 they should not be forced to take unreasonably low  
24 values. That's the only reason. The interest of  
25 the client is the only reason that we have opposed

1 these bankruptcies and continue to oppose these  
2 bankruptcies.

3 MR. POLLOCK: Your Honors, do you  
4 have any questions?

5 THE COURT: Judge Singh?

6 JUDGE SINGH: I don't.

7 THE COURT: I don't have any  
8 questions, either.

9 MR. POLLOCK: Thank you, Judges.

10 THE COURT: Why don't we take our  
11 lunch break, 45 minutes. All right?

12 Mr. Brody, how long will it take you?

13 MR. BRODY: 20, 20 minutes, maybe.

14 THE COURT: Okay. All right. And  
15 we're hearing from Judge Singh's calendar with  
16 regard to supplemental briefing. When we return,  
17 we'll address the objections on Exhibit 5, and with  
18 regard to the confidential client information.  
19 Okay?

20 MR. BRODY: Yes, Your Honor. Thank  
21 you.

22 THE COURT: All right. And we can go  
23 off the record.

24 (A recess was taken.)

25 THE COURT: Counsel, thank you.

1 Please be seated. We're going to go back on the  
2 record and reconvene.

3 Mr. Brody, what did you say, you have  
4 five questions left?

5 MR. BRODY: Not many more than that,  
6 actually.

7 THE COURT: Okay. All right.

8 MR. BRODY: So.

9 THE COURT: Probably is a little bit  
10 more, but I was -- I was downplaying the questions a  
11 little.

12 MR. BRODY: No, it's not many -- it's  
13 not many more than that.

14 THE COURT: And Mr. Birchfield,  
15 you're still under oath, sir.

16 THE WITNESS: Yes, sir.

17 - - -

18 RECROSS EXAMINATION

19 BY MR. BRODY:

20 Q. Mr. Birchfield, you talked about some  
21 of the trials, the talc trials that the Beasley  
22 Allen firm has had. Do you recall that testimony?

23 A. Yes.

24 Q. It's -- and you talked about some  
25 verdicts that came in, in 2016. I think you

1 mentioned three in particular?

2 A. Yes.

3 Q. None of those are still standing  
4 after the appeal, right?

5 A. None of the -- none of the verdicts  
6 are standing, that's true.

7 Q. Right.

8 A. Those cases are -- they vacate -- the  
9 verdicts were vacated, and the trials are pending,  
10 awaiting retrial.

11 Q. And it's basically fair to say that  
12 since 2013, when Beasley Allen started representing  
13 talc plaintiffs, Beasley Allen has tried only 13  
14 cases, not recovered a dime for claimants, and has  
15 not settled any of the cases, right?

16 A. I mean, the point of -- the point  
17 that you're going to make is excepted, it's not  
18 true, I mean, that we haven't collected a dime. We  
19 did have a co-counsel agreement in the -- for a  
20 plaintiff in the Ingham case.

21 But it is true that we have been in  
22 this litigation and we have -- we have a  
23 longstanding and continued commitment to this  
24 litigation, even though we haven't been -- haven't  
25 been paid a dime. That's true.

1           Q.           Right. So it is fair to say that  
2           since 2013, Beasley Allen has tried only 13 cases,  
3           not recovered a dime for claimants, and not settled  
4           any of the cases?

5                       MR. POLLOCK: Objection; compound,  
6           asked and answered.

7                       THE COURT: Why don't you break that  
8           question up. And you did ask the question. What is  
9           different about that question, Mr. Brody?

10                      MR. BRODY: Well, there were a bunch  
11           of qualifications that preceded it. I was just  
12           trying to make sure the record is clean.

13                      THE COURT: That's fine. Why don't  
14           you address each of those points. All right,  
15           Mr. Birchfield?

16                      THE WITNESS: Yes.

17           BY MR. BRODY:

18                      Q.           That's fine.

19                      So, since 2013, Beasley Allen has  
20           tried only 13 cases, right?

21                      A.           We have had -- we have had 13 cases  
22           go to trial. I mean, some of those cases are cases  
23           that were our cases, some we were helping other --  
24           other law firms, but -- but yes.

25                      Q.           Beasley Allen has not recovered a

1 dime for the claimants?

2 A. Not true. Claimant.

3 Q. Fair enough. And has not settled any  
4 of the cases, right?

5 A. We have not settled any of the cases.

6 Q. All right. Do you have a copy of  
7 your April 2023 deposition in front of you up there?

8 A. I do not.

9 Q. All right. I'll give you a copy.

10 MR. BRODY: If I may approach, Your  
11 Honor.

12 THE COURT: You may.

13 Do you have a copy of that,  
14 Mr. Pollock?

15 MR. POLLOCK: I do not.

16 MR. BRODY: I'll give you a copy.  
17 It's the one you were reading from earlier.

18 MR. POLLOCK: Okay. Is it the same  
19 big fat thing?

20 MR. BRODY: Yeah.

21 MR. POLLOCK: Okay. Then I probably  
22 have it.

23 THE COURT: It's not one of the  
24 exhibits, either?

25 MR. POLLOCK: I'm sure I have it.

1 Thank you.

2 MR. BRODY: Yeah. I think it's in  
3 the exhibits, as well. It's --

4 MR. POLLOCK: Thank you. We're good.

5 MR. BRODY: It's within the excerpt  
6 that in the exhibits, as well.

7 BY MR. BRODY:

8 Q. So if I could turn to page 58, line  
9 20. Are you there?

10 A. Yes.

11 Q. And you were asked the question: "So  
12 since 2013, with respect to the 11,300 claims that  
13 Beasley Allen represents, Beasley Allen has tried  
14 only 11 cases --" there have been two in Florida  
15 this year in addition to that, right?

16 A. That's correct.

17 Q. "-- not recovered a dime for  
18 claimants, and not settled any of the cases; is that  
19 fair?" And your answer was: "That's basically  
20 fair." Correct?

21 A. Correct, that's basically --

22 Q. That was -- that's -- all right. You  
23 can set that aside.

24 The -- you were asked questions by  
25 Mr. Pollock about whether a contribution to the MDL

1 common benefit fund could be part of a bankruptcy  
2 resolution. Do you recall those questions?

3 A. Yes.

4 Q. And you understand, however, that a  
5 contribution to the MDL common benefit fund was not  
6 part of J&J's proposed bankruptcy resolution, right?

7 A. I understand that, yes.

8 Q. All right. You talked about a  
9 settlement matrix that you shared with J&J during  
10 the course of the Imerys bankruptcy. Do you recall  
11 that testimony?

12 A. Yes.

13 Q. You were not privy to Johnson &  
14 Johnson's internal privileged and confidential  
15 discussions of that settlement matrix, were you?

16 A. No.

17 Q. The last thing I want to ask you  
18 about, you -- the last thing I want to ask you  
19 about, you indicated that as a result of your  
20 leadership position, that you, at times, are  
21 representing not only your own clients' interests,  
22 but the interests of clients of other lawyers,  
23 right?

24 A. No. We have a -- what I said is that  
25 we view -- we view our role as a leadership role in



1 the MDL as having a fiduciary duty to the other  
2 claimants and their counsel.

3 Q. Fair. And that was going to be my  
4 next question. You indicated that you have duties  
5 to them, right?

6 A. Right.

7 Q. And one of the things you talked  
8 about with respect to the Legacy proposal that you  
9 testified about was this idea that Legacy, if the  
10 proposal were accepted, would be adverse to you and  
11 your clients, right?

12 A. Yes.

13 Q. That they would then hold the entity  
14 that had talc liabilities --

15 A. Right.

16 Q. -- and, in essence, they would be on  
17 the other side of the V from where you were, right?

18 A. Yes, that's right.

19 Q. Now, if -- if I may, I just -- just  
20 to reorient ourselves from April 10th, if I may  
21 approach with another excerpt from the privilege  
22 log.

23 THE COURT: You may.

24 MR. BRODY: This just makes it easier  
25 from sorting through the whole big thing.

1 BY MR. BRODY:

2 Q. We pulled out from that entries that  
3 -- and we talked about some of these on April 10th,  
4 where Ms. O'Dell shared an ovarian cancer leadership  
5 memo with Legacy discussing ovarian cancer case  
6 values, injuries, and damages analysis.

7 Do you see that?

8 A. Yes.

9 Q. Your ovarian cancer claim values, as  
10 well as claim estimation report methodology.

11 Do you see that?

12 A. Yes.

13 Q. And then we talked about Niall  
14 Davies, who is listed on here, sharing draft QSF  
15 qualifications for the Legacy ovarian cancer  
16 proposal.

17 Do you see that?

18 A. I do.

19 Q. And Mr. Davies -- is he still with  
20 the Beasley Allen firm?

21 A. He is.

22 Q. All right. And he was at the time,  
23 correct?

24 A. Yes.

25 Q. Right. And so you gave somebody

1     you've identified as a potential future adversary  
2     your analysis of case values, injuries, and your  
3     damages analysis, if I'm reading this correctly.  
4     Right?

5             A.         Okay.

6             Q.         Yes?

7             A.         Yes.

8             Q.         All right.

9                     MR. POLLOCK: Thank you. That's all  
10     I have.

11                    THE COURT: Thank you.

12                    Mr. Pollock, anything in follow-up?

13                    MR. POLLOCK: Sure.

14                    Using the last document, which we --  
15     I don't think it's marked for identification. Do we  
16     want to give it a number, or what do we want to do?

17                    MR. BRODY: Sure. I believe the  
18     privilege log was marked as J&J 1.

19                    THE COURT: Right.

20                    MR. BRODY: So maybe the excerpt that  
21     I used earlier today could be J&J 1A, and this  
22     excerpt can be J&J 1B, if that's okay.

23                    THE COURT: Fair.

24                    Mr. Pollock, any thoughts?

25                    MR. POLLOCK: It works for me.

1 THE COURT: A and B.

2 - - -

3 (Exhibit J&J 1A, transcript excerpt,  
4 marked for identification.)

5 (Exhibit J&J 1B, transcript excerpt,  
6 marked for identification.)

7 - - -

8 FURTHER REDIRECT

9 BY MR. POLLOCK:

10 Q. On whatever you said just -- 1B, the  
11 one you've got in front of you, that one, can we  
12 agree that the -- these documents were subjected to  
13 a mediator -- I'm sorry. The mediation privilege is  
14 claimed, correct?

15 A. Pardon me -- yes.

16 Q. They were submitted for review by  
17 Judge Schneider, correct?

18 A. Yes.

19 Q. And Judge Schneider reviewed them and  
20 decided they were privileged, too, correct?

21 A. Yes. I mean, he entered his order,  
22 yes.

23 Q. And his order says they are  
24 privileged, right?

25 A. Yeah. That's right.

1           Q.       Okay. Do you believe Judge Schneider  
2 is capable?

3           A.       I do.

4           Q.       Do you think he understands the  
5 players in the game?

6           A.       I do.

7           Q.       Fair enough.

8                    So Mr. Brody got into the question of  
9 how you have tried 13 cases, and some of them are  
10 somebody else's cases, some of them are your cases.  
11 Let's just call it 13, make it simple. I'm a simple  
12 guy. So let's call it 13 cases. And you have not  
13 collected a significant amount on the -- I am having  
14 a hard time reconciling this, because I'm looking at  
15 the numbers that are being offered in settlement,  
16 and they're different with zero value.

17                   So how do you value the claims? What  
18 do you think the value of these claims is, in broad  
19 brush? Why are you pursuing -- let me ask it  
20 differently. Why are you pursuing it?

21                   THE COURT: And you're talking about  
22 current claims, future claims, or claims with merit  
23 as --

24                   MR. POLLOCK: Good point. Let me go  
25 back, since I slaughtered this question, and I'm

1 going to try and clean it up. I'll do it the right  
2 way.

3 BY MR. POLLOCK:

4 Q. Beasley Allen, you said, is trying to  
5 get reasonable and fair value for its clients. You  
6 testified to that before, right?

7 A. Yes.

8 Q. What are the claims that you think  
9 are the ones you are pursuing today? Can you  
10 describe that category of claims?

11 A. I mean, the claims that we are -- you  
12 know, the claims that we are pursuing are the  
13 ovarian cancer claims. I mean, that's the  
14 leadership role that Beasley Allen has, pertains to  
15 the ovarian cancer claims. I do think that Beasley  
16 Allen has one, maybe two meso claims. But our focus  
17 is and has been since 2014 for the -- for the  
18 ovarian cancer claims.

19 Q. And we've heard about the -- if I get  
20 it off by a little bit, I'm wrong -- 3.2 billion --  
21 3.52 [sic] billion in Imerys. We've heard about the  
22 7.9 billion that is J&J's preferred plan. Is that  
23 the -- to address the ovarian cancer claims? Is  
24 that what -- that's what -- is that what those  
25 numbers are targeted at?

1           A.           Yes. So there have been -- there  
2     have been multiple, you know, multiple proposals,  
3     term sheets that have been, you know, that have been  
4     proffered through the course of the -- the course of  
5     these last four years, and including the proposal  
6     that we talked about in September of 2020 that was  
7     presented as a 3.25. But that was just one slice.  
8     It's not a -- it wasn't a 3.25. That was one  
9     proposal in 2020.

10                   The number of claims was much  
11     different. The number of claims was much different  
12     then. We have the -- not the 7.9, but the 8.9, you  
13     know, billion dollar proposal that was part of the  
14     LTL 2 bankruptcy that was for both the ovarian  
15     cancer currents and the futures, mesothelioma  
16     currents and futures, and all the attorney generals  
17     actions.

18                   But the only -- I mean, our position,  
19     whether we have been -- you know, whether it was in  
20     the, you know, the earliest proposal in 2020 or part  
21     of the Imerys -- Imerys deal, or negotiations, the  
22     mediation in the bankruptcy, it has always been to  
23     get reasonable settlement values for our claimants  
24     and for our clients, and that's -- that's it.

25           Q.           And do you believe in good faith that

1 the claims you have -- are pursuing on behalf of  
2 Beasley Allen and the MDL, the talc claimants  
3 committee, the groups you work with, do you believe  
4 those claims have merit?

5 A. Yes, absolutely.

6 Q. And do you intend to pursue them?

7 A. Yes.

8 MR. POLLOCK: I have no further  
9 questions.

10 THE COURT: Thank you.

11 You may step down, Mr. Birchfield.

12 Let's quickly address -- yes?

13 MR. BRODY: With the Court's  
14 permission, I would like to ask Mr. Haas to -- the  
15 Court to allow Mr. Haas to take the stand to answer  
16 five or so questions about the document that was  
17 brought and offered as P-3 by Mr. Conlan.

18 MR. POLLOCK: Your Honor, absolutely  
19 not. We have been patient to a fare-thee-well on  
20 your end and our end. To suddenly allow Mr. Haas  
21 the megaphone once again, there's nothing in that  
22 document that could not have been addressed before,  
23 and there's no reason we should be addressing it  
24 now.

25 Mr. Haas knew about this document, he



1 received this document, so there's no reason he  
2 couldn't have addressed it before. The fact that  
3 they withheld it and now they're saying we now want  
4 to address it, that's ludicrous.

5 At some point, there has to be an  
6 end, Your Honors. I respectfully submit this should  
7 be it.

8 THE COURT: Well, Judge Singh and I  
9 will discuss that separately. Counsel may be  
10 seated. The initial question we want to address is  
11 what was contained in the correspondence that we  
12 received this week.

13 Regarding Exhibit 5 and objections,  
14 J&J has objections. To the extent, you know, J&J  
15 has any objections, we would receive that document  
16 with J&J's objections.

17 Mr. Pollock, Mr. Brody, any thoughts?

18 MR. POLLOCK: So the only -- there's  
19 one word that is objected to. The one word is  
20 "recommend," I think it is. And you had already  
21 ruled, Judge Porto, that "Did Jim Conlan recommend  
22 the Texas Two-Step?" He says, "I did not."

23 And so, to me, it is -- if that's the  
24 only objection they've got, that word "recommend,"  
25 because that would be attorney advice. But that,

1 the attorney advice -- I'll even agree --

2 THE COURT: But that's out. You  
3 know, that was out as part of our record.

4 MR. POLLOCK: I agree. That's why  
5 under the -- I'll even, since I'm a generous guy,  
6 I'll agree to a partial waiver, if you want. As to  
7 that document, the privilege, whatever there is, is  
8 waived. But that's gone.

9 THE COURT: Mr. Brody?

10 MR. BRODY: Well, I don't --

11 THE COURT: Because that was part of  
12 the testimony.

13 MR. BRODY: It was part of the  
14 testimony, but I don't think there was -- I don't  
15 think the Court's waiver holding as to the question  
16 that was posed to Mr. Conlan about the Texas  
17 Two-Step and his recommendation was so broad as to  
18 encompass the entirety of the November 5th email.

19 There can't be a -- there certainly  
20 can't be a waiver of anything in there by  
21 Mr. Pollock because it's J&J's privilege. And we  
22 had proposed two very minor redactions, as the Court  
23 saw. I think the Court saw both a redacted and  
24 unredacted version. We tried to be as narrow as  
25 possible based on objections that we think we should

1 still be able to maintain.

2 Obviously, the Court has seen that.  
3 The Court understands what its ruling was,  
4 understands the scope of its waiver ruling, and so  
5 we -- you know, obviously, the Court can make a  
6 decision on which version will come into the record.

7 THE COURT: I think we're going to  
8 stand by we'll accept it with the J&J  
9 recommendations.

10 JUDGE SINGH: The redactions.

11 THE COURT: Redactions.

12 MR. BRODY: Thank you.

13 THE COURT: And then --

14 JUDGE SINGH: The objections to the  
15 attorney's eyes only materials.

16 THE COURT: Right.

17 What are your thoughts with regard to  
18 those records, then, Mr. Pollock, because they don't  
19 really address -- they're not any issue with regard  
20 to credibility or impeachment as it relates to  
21 Mr. Birchfield. It goes -- really, it's impeaching  
22 Mr. Conlan. And Mr. Conlan has counsel, and I  
23 didn't see any objection from -- I mean, I don't  
24 think Judge Singh did -- with regard to any  
25 objection from Mr. Conlan's attorney.

1 MR. POLLOCK: Mr. Conlan's counsel  
2 doesn't have it. It wasn't served on him. So he  
3 didn't -- with all due respect, Judge, that's  
4 unfair. He is -- they have not been given the  
5 opportunity to be heard.

6 But remember, Andy is being tied part  
7 and parcel under -- under the broad application of  
8 RPC 1.6, which addresses an attorney, meaning  
9 Mr. Conlan, disclosing information.

10 But to me, the -- it is blatantly  
11 unfair, and certainly it goes to credibility at a  
12 minimum. It has to go to credibility, these  
13 documents, at a minimum, that J&J had these records.  
14 Mr. Haas' certification is, We've got an incredible  
15 computer system, everything gets shoved in there, we  
16 had this stuff months ago.

17 So why did they wait until Jim Conlan  
18 is off the stand, when they have a legion of  
19 lawyers, a billion dollars to blow on defense, and,  
20 yet, they sandbag Jim Conlan with this document  
21 after he's off the stand and back home. That's  
22 outrageous. The confrontation clause, he's got an  
23 ethics hearing in Ohio, or in Illinois, wherever he  
24 lives.

25 THE COURT: Iowa.

1 MR. POLLOCK: Whatever. All the  
2 same. It's west of the Mississippi. But the bottom  
3 line is the -- the fact is that he has no chance to  
4 rebut it himself.

5 Second of all, I strongly, incredibly  
6 disagree. When you look at 99 percent of the  
7 documents, "I don't recall"; "I don't remember"; "I  
8 can't really -- that's not the way I remember it."  
9 There's only a few where they say there's something.

10 And then, when we look at the  
11 redactions, the redactions are, "I have incredibly  
12 detailed discussions regarding... blank"; "In fact,  
13 here's a memo from me regarding... blank."

14 So how does this Court ever make any  
15 sense out of what was allegedly discussed, because  
16 while it's true, under Yuna, they had the choice of  
17 putting it in, I think that they have to actually  
18 make their case. And right now, all it says is,  
19 Yes, Jim -- what I conceded with you, Judge Porto,  
20 on the very first day. Jim Conlan was a lawyer at  
21 Faegre. He worked on super secret J&J stuff. I've  
22 never denied it. He was a lawyer who gave advice.

23 But how do I, representing Andy  
24 Birchfield, ever confront the question, "Did Jim  
25 Conlan learn anything during the course of that

1 representation that is disclosed"? That's not been  
2 proven at all. But even if it was, was it  
3 significantly harmful? And I have to rely on both  
4 prongs, right? I'm not giving up the second part of  
5 Yuna.

6 So it worries me deeply about  
7 admitting these documents after the fact, at the end  
8 of the hearing, once Mr. Haas and Murdica and Conlan  
9 are gone, and suddenly I get these documents. I  
10 object to their introduction.

11 THE COURT: Mr. Brody?

12 I mean, they go directly to  
13 Mr. Conlan's testimony.

14 MR. BRODY: They go directly to  
15 Mr. Conlan's testimony --

16 THE COURT: Has anyone provided it to  
17 Mr. Conlan's attorney?

18 MR. BRODY: -- and to the credibility  
19 -- well, it's attorneys' eyes, attorneys' eyes only,  
20 and so --

21 MR. POLLOCK: They were not.

22 MR. BRODY: We followed the Court's  
23 instruction.

24 Now, as Your Honors know, I sought to  
25 offer them while Mr. Conlan was on the stand, and

1 the Court's decision was, No, let's wait. And, you  
2 know, when you go through the transcript, you will  
3 see the number of places where, in response to his  
4 testimony, you know, I said, Well, here's another  
5 place where I would bring a document out now, if  
6 permitted.

7 The Court's preference was announced  
8 after the lunch break on April 10th, was if -- if  
9 there are areas where you believe that he perjured  
10 himself and you have that impeachment, you know,  
11 provide that impeachment. We have submitted that  
12 impeachment in camera and attorneys' eyes only at  
13 the Court's direction.

14 You know, as to the question that  
15 Mr. Pollock asked, Well, how does the Court make  
16 sense of what was submitted, of what the documents  
17 show or don't show, that's really an argument about  
18 the weight that Mr. Pollock believes the Court  
19 should give those documents.

20 And, certainly, I expect the parties  
21 will be making arguments about the weight the Courts  
22 should give all the documents that have been  
23 provided and are part of the record, including, you  
24 know, including documents like Plaintiff's P-3 that  
25 Mr. Conlan brought with him to his testimony on

1 April 10th.

2 And so the answer to that one is  
3 easy. You know, the answer to the objection is, you  
4 know, we -- we sought to offer these while  
5 Mr. Conlan was on the stand as impeachment. We  
6 followed Court's direction. We are submitting --

7 THE COURT: Well, there was also a  
8 concern about the waiver of the privilege, also.  
9 That was, you know, critical with the Court's  
10 thoughts in that regard. It wasn't that we had  
11 blanketly said don't disclose them; it's just we  
12 were concerned about the privilege.

13 MR. BRODY: Right. And the Court  
14 addressed that in its invitation that we make  
15 redactions. And obviously, as Your Honor said, even  
16 with redactions, you -- you submit them, and I may  
17 find that, you know, there has been a waiver or not  
18 a waiver. You made that point during the hearing on  
19 April 10th.

20 And so that's where we stand. We  
21 followed the Court's direction, and we submitted the  
22 materials. They are impeachment materials. And I  
23 am sure that we will have arguments from Mr. Pollock  
24 and Beasley Allen as to the weight that the Court  
25 should give them.



1 THE COURT: All right. I think Judge  
2 Singh and I would like to just discuss briefly with  
3 regard to that, with regard to P-3.

4 MR. BRODY: Yes.

5 THE COURT: And then we for your eyes  
6 only privileged materials.

7 MR. BRODY: Sure.

8 THE COURT: We'll take five. We'll  
9 go off the record.

10 (A recess was taken.)

11 THE COURT: Counsel, the Courts are  
12 going to maintain its position with regard to the  
13 attorney eyes only privileged material, argue the  
14 weight, you know, how much, you know, but maintain  
15 the privilege that's been asserted. Okay? So you  
16 can reference, but maintain the privilege. That  
17 goes to the weight with regard to the issue here.

18 As it relates to, what, P-5, the  
19 Court does not require or need any additional  
20 testimony.

21 MR. BRODY: Thank you, Your Honor.

22 THE COURT: All right?

23 MR. BRODY: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 JUDGE SINGH: Just one federal court

1 footnote as to the attorneys' eyes only submission.  
2 To the extent the parties address something  
3 substantive that has been submitted with that  
4 designation, we anticipate it will be appropriately  
5 filed under seal on the federal court's docket  
6 pursuant to our local civil rule.

7 THE COURT: And the same thing with  
8 the regard to eCourts.

9 MR. BRODY: Thank you, Your Honors.  
10 And as to the briefing, just to  
11 confirm, two weeks simultaneous submission, and then  
12 replies seven days after that.

13 JUDGE SINGH: Correct.

14 THE COURT: That's correct.

15 MR. BRODY: Thank you.

16 THE COURT: Counsel, thank you.

17 MR. POLLOCK: Thank you, Your Honors.

18 THE COURT: You're welcome.

19 (Proceedings concluded at 1:43 p.m.)  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

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[&amp; - 2023]

Page 1

|   |  |   |   |
|---|--|---|---|
| <b>&amp;</b>  | <b>10th</b> 7:9 9:7,10<br>22:17 30:22<br>36:21 42:23<br>44:18 50:2,7<br>131:21 132:20<br>132:23 144:20<br>145:3 158:8<br>159:1,19  | <b>17</b> 127:3 129:17<br>133:19,20<br>134:8<br><b>17th</b> 48:9 57:8<br>115:4 126:9<br>134:5<br><b>18</b> 54:20<br><b>18th</b> 43:10 44:6<br>48:11 53:8<br>56:21   | <b>2000s</b> 104:9<br><b>2013</b> 86:21,21<br>93:5 139:12<br>140:2,19<br>142:12<br><b>2014</b> 149:17<br><b>2016</b> 87:5,5,12<br>87:13,15,20,21<br>88:8 90:13 91:8<br>91:23 138:25<br><b>2017</b> 88:7,10<br>89:12<br><b>2019</b> 98:24<br>100:20 101:1<br>101:17<br><b>202.383.5300</b><br>2:10<br><b>2020</b> 78:22 90:8<br>90:17,25 92:23<br>93:5 95:18<br>99:13 111:21<br>129:22 130:7,8<br>132:14 133:6<br>133:24,25<br>134:8,11,16<br>150:6,9,20<br><b>2021</b> 92:21 97:2<br>99:14 112:15<br><b>2022-23</b> 101:17<br><b>2023</b> 25:17<br>28:11 101:1<br>108:25 111:16<br>111:22 112:16<br>112:19,23<br>126:9 127:3<br>129:17 133:19 |
| <b>&amp;</b> 2:8,11,14 4:5<br>4:21,21 5:2 7:9<br>14:11,16,20<br>15:11 20:5 35:2<br>35:3 43:1 47:18<br>48:6 54:24<br>129:23 130:25<br>143:13 | <b>11</b> 85:8 120:23<br>142:14<br><b>11,300</b> 142:12<br><b>110</b> 88:4,13<br><b>111</b> 24:19<br><b>118</b> 28:10<br><b>12</b> 25:13 60:20<br>61:13,19,25<br>62:13 65:21<br>66:19,19<br>120:23 133:20<br><b>12.9</b> 66:3<br><b>1201</b> 1:9<br><b>12th</b> 24:1,3<br>25:23 34:24<br>44:18<br><b>13</b> 139:13 140:2<br>140:20,21<br>148:9,11,12<br><b>135</b> 26:5<br><b>138</b> 3:6<br><b>14</b> 126:1,4<br><b>1454</b> 162:16<br><b>147</b> 3:7,13,14<br><b>15</b> 16:22 54:12<br><b>1625</b> 2:9<br><b>16th</b> 24:14,21<br>29:8 | <b>19</b> 50:25 51:5<br>66:9,19 75:20<br>80:14,16,17<br>106:7,14,17,19<br>106:20 119:16<br><b>1984</b> 17:25<br><b>1993</b> 18:2<br><b>1:43</b> 161:19<br><b>1a</b> 3:13 146:21<br>147:3<br><b>1b</b> 3:14 146:22<br>147:5,10 |   |
| <b>0</b>  |  | <b>2</b>  |   |
| <b>08648</b> 2:5  |  | <b>2</b> 34:4,11 39:2<br>39:21 60:20,24<br>61:18 84:7<br>108:18 122:15<br>136:4 150:14<br><b>20</b> 7:18 16:22<br>25:15 88:8<br>137:13,13<br>142:9<br><b>2000</b> 87:16<br><b>20006</b> 2:10                                  |   |
| <b>1</b>  | <b>1</b> 27:15 51:13<br>97:18,20<br>108:19 123:14<br>123:17 135:10<br>146:18<br><b>1.10.</b> 19:2 62:16<br><b>1.6</b> 15:12,14<br>18:25 62:15<br>109:12 155:8<br><b>1.6.</b> 11:24<br><b>1.9</b> 15:14 19:2<br><b>10</b> 16:23 26:23<br>26:24 27:7<br>29:17,22 30:13<br>32:2 41:20 47:9<br>60:20,23 61:18<br>85:4,10 120:22<br>128:1,13<br>132:12<br><b>100,000</b> 120:17<br>122:22,22  |   |   |

[2023 - accept]

Page 2

|   |  |   |   |
|---|--|---|---|
| 134:5,8,18,22<br>141:7<br><b>2024</b> 1:11 21:22<br>100:21 162:23<br><b>22</b> 3:4 74:23<br><b>224,000</b> 123:21<br><b>23</b> 111:18<br><b>24</b> 130:7<br><b>24th</b> 24:16<br>25:13,17 26:22<br>34:18<br><b>25</b> 85:8 121:3<br>130:7<br><b>25th</b> 44:13<br><b>2648-15</b> 1:2 4:7<br><b>2738</b> 4:7<br><b>29</b> 125:7<br><b>2nd</b> 47:25<br>57:12 | <b>30th</b> 112:18<br><b>30xi00142900</b><br>1:22 162:21<br><b>35</b> 19:4<br><b>3rd</b> 21:22   | <b>56</b> 125:8,12<br><b>58</b> 142:8<br><b>5th</b> 153:18  | <b>86</b> 3:5<br><b>877.370.3377</b><br>1:24<br><b>8:26</b> 82:6  |
|   | <b>4</b>   | <b>6</b>  | <b>9</b>  |
|   | <b>4</b> 43:11 44:5<br>45:25 103:7<br>104:15,16<br>117:15 122:23<br>123:10<br><b>4.34</b> 122:17<br><b>40</b> 9:9 21:4 62:1<br><b>42</b> 26:5 107:7<br><b>43,000</b> 122:23<br><b>45</b> 26:13,15<br>137:11<br><b>450</b> 118:20<br><b>49</b> 120:22,25<br>121:1,2<br><b>4:30</b> 9:8<br><b>4th</b> 112:23<br>134:22 | <b>6</b> 61:17 103:14<br>132:10 162:23<br><b>609.896.3600</b><br>2:5<br><b>61</b> 129:20<br><b>63</b> 130:6<br><b>64</b> 130:12<br><b>66</b> 102:19<br><b>67</b> 102:22                       | <b>9</b> 125:24,25<br>126:4 129:20<br><b>917.591.5672</b><br>1:24<br><b>93</b> 18:3<br><b>94</b> 133:19<br><b>95</b> 53:11 116:9<br><b>99</b> 156:6<br><b>997</b> 2:4<br><b>9:38</b> 4:1  |
| <b>3</b>  | <b>5</b>   | <b>7</b>  | <b>a</b>  |
| <b>3</b> 1:11 130:16<br>131:10 151:17<br>158:24 160:3<br><b>3.2</b> 149:20<br><b>3.25</b> 130:11,17<br>131:17,24<br>133:6,8<br><b>3.25.</b> 150:7,8<br><b>3.5</b> 128:7<br><b>3.52</b> 149:21<br><b>30</b> 9:8 21:4 90:4<br><b>300</b> 1:4 4:7<br><b>300,000</b> 119:21<br>120:5  | <b>5</b> 5:13,14 125:6<br>125:7,12 130:8<br>137:17 152:13<br>160:18<br><b>5.3</b> 15:15<br><b>5.5</b> 132:10<br><b>500,000</b> 104:19<br><b>50s</b> 123:9<br><b>531,995</b> 104:19<br><b>55</b> 87:14 104:16   | <b>7</b> 50:13 102:12<br>102:16 103:15<br>105:19<br><b>7.9</b> 149:22<br>150:12<br><b>70</b> 12:19 87:15<br><b>72</b> 87:6,13<br><b>74</b> 130:14<br><b>75</b> 12:19<br><b>7th</b> 26:9 28:11 | <b>a.m.</b> 4:1 82:6<br><b>abandon</b> 92:15<br><b>ability</b> 162:9<br><b>able</b> 13:6 33:14<br>36:25 38:14<br>39:21,25 40:22<br>47:14 79:15<br>104:11 118:16<br>154:1<br><b>absolutely</b><br>12:10 21:3<br>75:23 94:4<br>121:20 128:3<br>151:5,18<br><b>abundantly</b><br>67:2<br><b>accept</b> 37:3<br>40:18 51:21,22<br>65:10 116:6 |
|   |  | <b>8</b>  |   |
|   |  | <b>8</b> 61:13,19,25<br>62:13 130:20<br><b>8.4</b> 15:15<br><b>8.9</b> 39:20 65:19<br>65:19 66:19<br>75:19 79:24<br>80:15 150:12<br><b>80</b> 123:15,16                                       |   |

[accept - allen]

Page 3

|   |  |  |  |
|---|--|--|--|
| 132:25 136:19<br>136:19 154:8<br><b>acceptable</b><br>58:10 73:7 76:8<br><b>accepted</b> 36:21<br>58:10 73:10<br>144:10<br><b>accomplish</b><br>39:2<br><b>accomplished</b><br>37:2<br><b>accountants</b><br>51:6<br><b>accurate</b><br>100:22 162:8<br><b>accused</b> 16:25<br>17:5 19:7<br>110:17 128:5<br>132:19 133:14<br><b>accutane</b> 89:5,6<br>89:9,19<br><b>achieved</b> 39:9<br>57:21<br><b>acknowledge</b><br>9:21 30:17<br>71:13<br><b>acquire</b> 106:22<br><b>acquisition</b><br>47:2<br><b>action</b> 1:3<br><b>actions</b> 107:4<br>150:17<br><b>actual</b> 21:11,15<br>21:16<br><b>actually</b> 13:22<br>28:8 29:20 | 44:12 47:21<br>49:24 50:16<br>65:14 117:8<br>138:6 156:17<br><b>ad</b> 10:21 107:7<br><b>adamant</b> 38:17<br><b>adamantly</b><br>136:16<br><b>add</b> 119:13<br><b>added</b> 39:5<br><b>addition</b> 142:15<br><b>additional</b><br>28:17 160:19<br><b>address</b> 5:9,20<br>8:18,20 11:6<br>30:6 66:21 67:1<br>92:19 93:9<br>111:4 115:6<br>124:19 137:17<br>140:14 149:23<br>151:12 152:4<br>152:10 154:19<br>161:2<br><b>addressed</b> 5:21<br>30:25 67:20<br>107:24 124:20<br>151:22 152:2<br>159:14<br><b>addresses</b> 155:8<br><b>addressing</b><br>25:11 151:23<br><b>adjust</b> 64:24<br><b>administer</b><br>21:21<br><b>administration</b><br>29:4 | <b>administrator</b><br>29:11<br><b>admission</b> 5:13<br>6:24<br><b>admitted</b><br>125:16,17<br><b>admitting</b><br>157:7<br><b>advancing</b><br>120:25 121:11<br><b>advantage</b><br>36:25 69:16<br><b>adversary</b><br>73:12 116:2,16<br>146:1<br><b>adverse</b> 11:19<br>57:5,13 69:22<br>144:10<br><b>advice</b> 115:15<br>152:25 153:1<br>156:22<br><b>advocated</b><br>53:19 57:12<br><b>advocating</b><br>57:23<br><b>affect</b> 16:3<br><b>affidavit</b><br>130:25<br><b>affiliates</b> 81:18<br><b>afield</b> 27:21<br>38:3 69:2<br>107:23 124:3<br><b>afraid</b> 82:25<br><b>ago</b> 16:19 84:12<br>155:16 | <b>agree</b> 12:22<br>43:4 76:19 78:8<br>79:3 80:13<br>116:22 121:15<br>125:17 133:17<br>147:12 153:1,4<br>153:6<br><b>agreed</b> 49:1<br>71:19<br><b>agreement</b> 29:3<br>51:24 63:14<br>139:19<br><b>agreements</b><br>68:10,15 70:1<br>133:13<br><b>ahead</b> 35:23<br>38:8,20 67:1<br>71:21 86:3<br>111:12 115:8<br>122:9 125:3<br>129:6<br><b>ahilton</b> 2:6<br><b>alcoholism</b> 17:9<br><b>align</b> 63:3,9<br><b>allay</b> 10:14<br><b>allegation</b><br>17:11 94:9<br><b>allegations</b><br>41:16<br><b>alleged</b> 17:6<br>19:6 62:24<br><b>allegedly</b> 69:15<br>156:15<br><b>allen</b> 2:7 4:15<br>10:6,9,13 11:16<br>11:20 12:8 13:2 |
|---|--|--|--|

[allen - argument]

Page 4

|   |  |   |  |
|---|--|---|--|
| 14:16,24 15:6<br>19:12 20:2,6<br>55:6 61:25<br>63:20 64:4<br>67:24 68:2,5,11<br>68:13,17,19,22<br>70:8 71:15<br>86:18 89:22<br>91:4 98:24<br>110:3 136:2<br>138:22 139:12<br>139:13 140:2<br>140:19,25<br>142:13,13<br>145:20 149:4<br>149:14,16<br>151:2 159:24<br><b>alliance</b> 116:21<br>116:23<br><b>allocation</b><br>104:18<br><b>allow</b> 34:15<br>151:15,20<br><b>allowed</b> 36:7<br>128:10<br><b>alternative</b><br>36:2,5 37:10,13<br>67:19<br><b>amount</b> 39:6<br>47:1 59:21<br>60:21 61:8,14<br>66:15 148:13<br><b>amounts</b> 65:18<br><b>analysis</b> 20:9<br>145:6 146:2,3 | <b>andrew</b> 117:17<br><b>andy</b> 2:7 3:3<br>18:9 22:1,4<br>53:9 55:4 63:24<br>93:4 105:20<br>117:25 124:11<br>124:15 128:5<br>129:5 131:11<br>155:6 156:23<br><b>andy's</b> 18:10<br><b>announced</b><br>12:20 14:20,25<br>48:14 57:7<br>81:14,21 82:3<br>158:7<br><b>annual</b> 44:24<br>44:25<br><b>answer</b> 15:19<br>17:20 28:23<br>33:3 35:20 41:3<br>42:12,14,16<br>43:23 55:20<br>64:2 66:20<br>70:21 72:19<br>79:11,13 108:3<br>112:8 126:18<br>126:18,20,22<br>130:20 131:4<br>133:23 142:19<br>151:15 159:2,3<br><b>answered</b> 41:1<br>41:3 60:2 71:18<br>84:13 140:6<br><b>answering</b> 40:6<br><b>answers</b> 42:13 | <b>anticipate</b><br>161:4<br><b>anticipated</b><br>8:16 46:13<br><b>anyway</b> 79:9<br><b>apart</b> 61:24<br>62:4<br><b>apologies</b> 85:25<br><b>apologize</b> 18:4<br>85:20 101:11<br>101:13 106:4<br>107:22 112:2<br>121:2<br><b>apparently</b><br>130:4 134:6<br><b>appeal</b> 95:10<br>135:12 139:4<br><b>appearance</b> 4:8<br>17:24 21:10<br><b>appears</b> 25:14<br>41:13<br><b>appellate</b> 95:11<br><b>applicable</b><br>67:17<br><b>application</b><br>67:10,17 155:7<br><b>applied</b> 29:3,4<br><b>appointed</b><br>87:17 91:10,12<br><b>appreciate</b><br>13:10 67:8<br>125:2<br><b>appreciation</b><br>116:15<br><b>approach</b> 23:3<br>23:10,11 92:4,6 | 141:10 144:21<br><b>approached</b><br>116:13,14<br><b>appropriate</b><br>61:8 67:13<br>105:13<br><b>appropriately</b><br>18:21 161:4<br><b>approximately</b><br>88:5 119:21<br><b>april</b> 7:9 9:7<br>22:17 30:21<br>34:18 36:21<br>41:20 42:23<br>50:2,6 78:21<br>90:17,25<br>112:22 126:9<br>127:3 129:17<br>131:21 132:20<br>132:23 133:19<br>134:5,8,17,21<br>141:7 144:20<br>145:3 158:8<br>159:1,19<br><b>area</b> 93:17<br><b>areas</b> 158:9<br><b>argue</b> 8:1<br>124:11 160:13<br><b>argued</b> 19:23<br>116:20 125:15<br>127:5<br><b>arguing</b> 16:7<br>19:10<br><b>argument</b> 6:2<br>6:22 8:17 17:15<br>32:9,13 63:23 |
|---|--|---|--|

[argument - bankruptcies]

Page 5

|  |  |   |  |
|--|--|---|--|
| 63:23,24 93:19<br>93:20 103:23<br>115:3,20<br>158:17<br><b>argumentative</b><br>29:19 30:6 32:8<br>55:16,18<br><b>arguments</b> 7:2<br>67:12 93:22<br>158:21 159:23<br><b>arising</b> 81:17<br><b>arrangement</b><br>68:12<br><b>arsdale</b> 117:16<br><b>article</b> 54:20<br>55:8 61:7<br><b>articulate</b><br>16:16<br><b>articulating</b><br>19:4<br><b>asbestos</b> 83:5<br>107:13 111:20<br><b>asc</b> 118:20<br><b>ashcraft</b> 91:11<br><b>aside</b> 142:23<br><b>asked</b> 6:4 17:18<br>21:14 32:16<br>36:3 41:1,24<br>42:1,2 71:17<br>119:14,16<br>126:11 131:21<br>133:5 140:6<br>142:11,24<br>158:15<br><b>asking</b> 13:19<br>43:19,22 44:1 | 50:3,4,5 65:23<br>65:24 66:18<br>68:23 102:13<br>103:7 110:12<br>110:14,16<br>112:9<br><b>asks</b> 36:13<br><b>asserted</b> 24:25<br>31:19,23 32:5<br>32:11 33:19<br>160:15<br><b>asserting</b> 22:23<br>31:4 32:17,20<br>33:3<br><b>assess</b> 96:22<br><b>assigned</b> 46:14<br>60:22<br><b>associate</b> 4:16<br><b>associated</b><br>46:15 51:1<br><b>assume</b> 49:21<br><b>assumes</b> 29:19<br><b>assure</b> 16:2<br><b>atl</b> 1:2 4:7<br><b>atlantic</b> 1:1,9<br>1:10<br><b>attached</b> 39:16<br>49:18 51:25<br><b>attaches</b> 50:16<br><b>attachment</b><br>105:20<br><b>attack</b> 12:5,8<br>63:20 118:6<br><b>attacked</b> 10:3<br>16:24 17:6 | <b>attacking</b> 6:9<br>10:4,9<br><b>attended</b> 44:12<br>44:15<br><b>attorney</b> 67:24<br>107:4 150:16<br>152:25 153:1<br>154:25 155:8<br>157:17 160:13<br><b>attorney's</b> 5:8<br>154:15<br><b>attorneys</b> 7:11<br>64:15 157:19<br>157:19 158:12<br>161:1<br><b>attributed</b><br>82:11<br><b>audience</b> 108:3<br><b>auditors</b> 118:15<br>118:16 119:1<br><b>august</b> 129:21<br><b>austin</b> 2:3 4:16<br>56:2<br><b>austin's</b> 55:10<br><b>author</b> 24:5,8<br>26:16,17<br>103:23<br><b>authored</b> 55:8<br><b>available</b> 59:5<br>120:24 121:11<br>122:18<br><b>average</b> 119:22<br>120:5,12<br>122:24,24<br>123:19,21 | <b>avoid</b> 75:16<br><b>awaiting</b><br>139:10<br><b>award</b> 66:23<br>121:24<br><b>awarded</b> 67:7<br><b>aware</b> 7:8<br>12:25 48:7,8,8<br>60:8 |
| <b>b</b>   |  |   |  |
| <b>b</b> 3:10 22:2<br>147:1<br><b>bacharach</b> 1:9<br><b>back</b> 9:6 16:18<br>25:10 30:25<br>33:23 34:2<br>41:12 45:24<br>64:18 65:11<br>67:7 71:12<br>85:14 97:6<br>103:6 124:6<br>125:5 126:5,13<br>138:1 148:25<br>155:21<br><b>backed</b> 127:5<br>128:6,8<br><b>background</b><br>30:2<br><b>bad</b> 19:12<br>82:14 83:2,22<br>124:12<br><b>ballot</b> 40:17<br><b>band</b> 12:17<br><b>bankruptcies</b><br>98:22 100:5   |  |   |  |



**[bankruptcies - billion]**

Page 6

|   |  |  |   |
|---|--|--|---|
| 137:1,2<br><b>bankruptcy</b><br>18:12 27:16<br>31:13 34:4,9,17<br>35:3 36:7,11<br>37:2,5,8,20,22<br>37:24 38:1,10<br>38:13,16 39:3<br>39:10,13,21<br>40:24 41:6<br>48:16,18 49:4,7<br>49:18 57:6,10<br>57:16,22 59:5,6<br>60:7 80:5,5<br>82:12,15 96:4,6<br>96:25 97:2,5,5<br>97:12,15,17<br>98:19,23 99:3,7<br>114:5,12 117:6<br>121:12,18,24<br>122:12,13<br>123:22,23<br>124:17 126:15<br>126:17 128:6<br>129:25 134:6<br>134:12,21<br>135:3,4,13,17<br>135:24,25<br>136:3,8,10,17<br>143:1,6,10<br>150:14,22<br><b>bar</b> 91:5<br><b>base</b> 105:3<br>127:13<br><b>based</b> 1:3 4:6<br>8:6 11:8 14:2 | 20:12 21:12<br>30:10 40:9<br>46:13 52:11<br>59:11 67:13<br>81:2 82:13<br>88:14 119:19<br>120:14 153:25<br><b>basically</b><br>139:11 142:19<br>142:21<br><b>basis</b> 14:19<br>61:6 64:7<br>110:24<br><b>battling</b> 83:2<br><b>bear</b> 127:1<br><b>bearing</b> 11:11<br><b>beasley</b> 2:7<br>4:15 10:6,9,13<br>11:16,20 12:8<br>13:2 14:16,24<br>15:6 19:12 20:2<br>20:6 55:6 61:25<br>63:20 64:4<br>68:22 70:8<br>71:15 86:18<br>89:22 90:12<br>91:4 98:24<br>110:2 136:2<br>138:21 139:12<br>139:13 140:2<br>140:19,25<br>142:13,13<br>145:20 149:4<br>149:14,15<br>151:2 159:24 | <b>beating</b> 12:17<br><b>becoming</b> 19:6<br><b>beg</b> 79:10,14<br><b>began</b> 86:21,23<br>90:21 103:3<br><b>beginning</b><br>37:21 38:11<br>42:24 88:10<br>97:18 115:23<br><b>behalf</b> 4:14 5:2<br>14:11 31:10<br>37:16 82:15<br>95:14 97:3<br>105:25 130:9<br>130:10 136:1<br>151:1<br><b>belated</b> 5:24<br><b>belief</b> 12:3<br>109:17 118:5<br><b>believe</b> 12:5<br>13:20 19:18<br>37:6 49:23<br>68:16 82:12<br>87:14,21 88:4,7<br>88:12 95:15,16<br>95:18 99:12<br>101:18 105:21<br>128:11 132:9<br>146:17 148:1<br>150:25 151:3<br>158:9<br><b>believed</b> 57:20<br>58:2 100:9<br><b>believes</b> 8:8<br>158:18 | <b>bench</b> 20:20<br><b>benefit</b> 15:7<br>58:25 59:4<br>60:10,13,16,18<br>60:22 61:12<br>62:4,5,8 64:14<br>65:16,18,21<br>66:12,13 67:4<br>67:11 76:4<br>119:10 120:22<br>120:23 121:10<br>121:19,25<br>122:4,8 124:17<br>125:17,18<br>126:16 143:1,5<br><b>best</b> 109:16<br>117:9 122:6<br>162:8<br><b>better</b> 82:16<br>112:14<br><b>beyond</b> 19:20<br>30:20 95:12<br><b>bias</b> 124:14<br><b>big</b> 10:5 73:9<br>75:14 135:1<br>141:19 144:25<br><b>bigger</b> 23:16<br>135:1<br><b>biggest</b> 113:14<br>113:14<br><b>billion</b> 39:20<br>51:1,5 65:19,20<br>65:22 66:9,20<br>75:20,20 79:24<br>80:14,16,17<br>106:7,17,19,20 |
|---|--|--|---|

[billion - brody]

Page 7

|  |  |   |  |
|--|--|---|--|
| 119:16 122:18<br>128:8 130:11<br>130:18 131:17<br>131:24 133:7,8<br>149:20,21,22<br>150:13 155:19<br><b>binder</b> 43:11,13<br>54:12 125:6<br><b>birchfield</b> 2:7<br>3:3 4:15 8:25<br>9:15 10:3,17<br>11:7 13:23<br>14:17,23 15:2,7<br>16:13 21:21,23<br>22:1,4,14 27:20<br>30:1 33:6 35:23<br>36:16 38:8,19<br>38:23 39:19<br>40:5,10 41:4,19<br>42:18 43:14<br>53:9 55:4,21<br>60:1 63:2,9,13<br>63:15 65:9,17<br>67:23 69:14,14<br>70:6 73:19 74:1<br>74:11,14,14,22<br>75:1 76:11,19<br>78:15 79:1,8,15<br>79:19 85:14<br>86:9,17 93:20<br>94:3,6 98:9<br>105:20 118:1<br>133:22 135:23<br>138:14,20<br>140:15 151:11<br>154:21 156:24 | <b>birchfield's</b> 9:3<br>69:4<br><b>bit</b> 53:22 64:22<br>73:12 111:10<br>124:2 125:1<br>138:9 149:20<br><b>black</b> 109:22<br><b>blank</b> 156:12<br>156:13<br><b>blanketly</b><br>159:11<br><b>blatantly</b><br>155:10<br><b>bloomberg</b><br>55:8<br><b>blow</b> 155:19<br><b>blowing</b> 82:16<br><b>board</b> 52:20<br>53:6<br><b>bolt</b> 96:6<br>134:13<br><b>book</b> 125:11<br><b>books</b> 118:22<br><b>botched</b> 101:13<br><b>bottom</b> 26:10<br>156:2<br><b>boulevard</b> 1:9<br><b>box</b> 40:17<br><b>boxes</b> 120:10<br><b>break</b> 7:8 85:1<br>85:3 112:10<br>132:3 137:11<br>140:7 158:8<br><b>brevity</b> 87:23<br><b>brief</b> 42:12 | <b>briefing</b> 6:23<br>7:23 8:4,7<br>21:13 67:9 95:4<br>137:16 161:10<br><b>briefly</b> 14:10<br>92:24 111:19<br>160:2<br><b>briefs</b> 72:13<br><b>bring</b> 23:6<br>158:5<br><b>bringing</b><br>114:14,14<br><b>bristol</b> 88:15<br><b>broad</b> 19:10<br>148:18 153:17<br>155:7<br><b>broader</b> 12:25<br>15:16 101:15<br><b>brody</b> 2:9 4:17<br>4:19,20,21 6:25<br>7:6,7 8:18,23<br>9:5,13,17 11:12<br>14:10 16:14<br>17:20 18:14<br>19:3,10 21:3<br>22:9,13 23:15<br>24:17 27:24,25<br>28:6 29:25 30:4<br>30:8,9 32:15,16<br>32:22 33:19,20<br>33:25 36:9,19<br>38:3,20,21,22<br>40:20 41:7,13<br>41:17,18 42:7,9<br>42:12,16,21<br>43:18,22,25 | 47:4 49:15 56:5<br>58:22 62:12,23<br>63:1 64:12 65:3<br>65:13,15 66:8<br>67:21,22 69:8,9<br>69:16,19 70:2,4<br>70:5 71:22<br>72:23,24 73:17<br>73:18 76:17,18<br>76:25 77:21<br>78:4,6,23 79:7<br>79:11 80:9<br>84:13,17,22<br>85:22,25 93:8<br>93:10 102:13<br>103:7 110:11<br>110:22,24<br>111:1 114:21<br>115:2 116:20<br>121:1,4,7 124:1<br>125:21 127:10<br>127:22,23<br>128:14,15<br>129:18 131:21<br>137:12,13,20<br>138:3,5,8,12,19<br>140:9,10,17<br>141:10,16,20<br>142:2,5,7<br>144:24 145:1<br>146:17,20<br>148:8 151:13<br>152:17 153:9<br>153:10,13<br>154:12 157:11<br>157:14,18,22 |
|--|--|---|--|

[brody - changed]

Page 8

|  |   |  |   |
|--|---|--|---|
| 159:13 160:4,7<br>160:21,23<br>161:9,15<br><b>brody's</b> 17:14<br>124:14<br><b>brought</b> 29:12<br>94:10 114:5<br>151:17 158:25<br><b>brush</b> 148:19<br><b>buckets</b> 107:12<br><b>buggers</b> 63:21<br><b>build</b> 128:16<br><b>builders</b> 16:21<br><b>built</b> 64:16<br><b>bunch</b> 140:10<br><b>butter</b> 105:17<br><b>button</b> 77:20<br><b>byte</b> 63:19 | <b>calling</b> 93:11<br><b>camera</b> 6:6,7<br>7:10 158:12<br><b>cancer</b> 24:9<br>25:20 26:19<br>27:4 28:14,15<br>28:18,21 31:10<br>32:4 46:8 52:14<br>53:8,12 80:23<br>80:24 81:17<br>83:5 88:3,12<br>95:14 97:3<br>105:6,7,10<br>106:1,25 107:1<br>107:16 108:23<br>114:8,8,9<br>118:24 119:5<br>119:25 120:2,2<br>129:24 130:10<br>131:18 145:4,5<br>145:9,15<br>149:13,15,18<br>149:23 150:15<br><b>cancers</b> 105:11<br>114:6 134:22<br><b>candidly</b> 9:2<br>20:13 110:25<br>127:16<br><b>capable</b> 148:2<br><b>care</b> 76:4,5<br>122:7,9<br><b>carolina</b> 97:21<br><b>case</b> 1:4 4:7,7<br>12:16 17:13<br>21:10,11 59:11<br>77:12 86:22,24 | 88:10,15 89:12<br>89:13 90:13,15<br>114:23 118:24<br>119:22 120:5<br>122:24 123:21<br>124:11 139:20<br>145:5 146:2<br>156:18<br><b>cases</b> 14:21<br>51:12 52:23<br>70:9 88:13,14<br>88:17,17 90:11<br>92:14 94:21<br>114:1,8,9,9,10<br>120:1 123:3,14<br>139:8,14,15<br>140:2,4,20,21<br>140:22,22,23<br>141:4,5 142:14<br>142:18 148:9<br>148:10,10,12<br><b>catch</b> 62:21<br><b>category</b><br>149:10<br><b>cause</b> 11:18<br>13:17 135:7<br><b>caused</b> 113:8<br><b>causing</b> 83:5<br><b>cc</b> 103:9<br><b>ccr</b> 1:22,22<br>162:3,18,21<br><b>center</b> 2:4<br><b>central</b> 41:13<br><b>ceo</b> 72:6 73:1<br><b>certain</b> 8:15<br>93:17 120:2 | <b>certainly</b> 7:7<br>8:3 21:9 33:14<br>48:13 52:3<br>58:17 78:7<br>115:6 124:3<br>136:22,22<br>153:19 155:11<br>158:20<br><b>certainty</b><br>118:15 119:4<br><b>certification</b><br>155:14<br><b>certifications</b><br>14:4<br><b>certified</b> 162:4<br>162:19<br><b>certify</b> 162:5<br><b>cervical</b> 114:8<br><b>cetera</b> 10:6<br>16:21 20:14<br><b>chair</b> 91:21<br><b>challenge</b> 83:21<br>84:10 94:6<br><b>challenged</b> 17:5<br><b>challenges</b><br>88:20,21<br><b>chance</b> 86:25<br>156:3<br><b>change</b> 30:15<br>101:18,21<br>102:2 111:23<br>113:1,5 135:16<br>135:19<br><b>changed</b> 30:17<br>84:6 133:25<br>134:7 |
| <b>c</b>   |   |  |   |
| <b>c</b> 1:12 2:1 22:2<br>162:1,1<br><b>calculation</b><br>120:11<br><b>calculator</b> 66:1<br><b>calendar</b><br>100:19 137:15<br><b>california</b> 89:3<br>89:13,19<br><b>call</b> 48:7,15<br>54:25 92:23<br>133:20 148:11<br>148:12<br><b>called</b> 58:14<br>87:7,24   |   |  |   |

## [changes - coerce]

Page 9

|   |   |  |  |
|---|---|--|--|
| <b>changes</b> 28:3<br>31:2 111:19<br>113:5<br><b>changing</b><br>100:24,25<br><b>character</b><br>16:23<br><b>characterizati...</b><br>115:3 128:16<br>128:21<br><b>characterized</b><br>131:17<br><b>charge</b> 20:16<br>51:8 62:1<br>118:21<br><b>child</b> 12:9<br><b>chocolate</b><br>105:17<br><b>choice</b> 156:16<br><b>choose</b> 49:13<br>54:7 116:6<br><b>chose</b> 116:8,17<br><b>chris</b> 77:9<br><b>chronological</b><br>23:21,23,24<br><b>circuit</b> 112:17<br>112:18 113:5<br>135:12,12,18<br><b>circuit's</b> 113:2<br><b>circumstance</b><br>70:22<br><b>circumstances</b><br>11:17 79:22<br><b>citing</b> 114:23<br><b>city</b> 1:10 | <b>civil</b> 1:3,9 161:6<br><b>claim</b> 24:9<br>25:20 26:19<br>27:4 101:13<br>116:3 145:9,10<br><b>claim's</b> 47:7<br><b>claimant</b> 83:25<br>104:11 136:18<br>141:2<br><b>claimants</b><br>10:10 34:3,16<br>39:12,21,24<br>40:2,12,18,21<br>46:13,23 49:11<br>53:9,12 58:14<br>59:16,18,23,24<br>59:25 68:10<br>81:23 95:14<br>96:3 99:1,23<br>100:1,4,24<br>105:7 120:9,17<br>120:18 122:21<br>122:21,23<br>123:4,8 136:2<br>136:12 139:14<br>140:3 141:1<br>142:18 144:2<br>150:23 151:2<br><b>claimed</b> 147:14<br><b>claims</b> 29:4,10<br>39:20 46:14<br>47:6,8,15 58:15<br>60:21 68:6,9,17<br>80:23,24 81:16<br>81:16 84:8 93:6<br>93:6,7 94:12,16 | 94:18 96:10,11<br>96:11,15,16,19<br>96:23 99:8<br>100:23,25<br>101:16,19,22<br>102:2,9 103:20<br>105:5,5 106:25<br>107:1,8,15<br>111:20,20<br>112:1,7,8,25<br>113:9,9,10,15<br>113:20 114:5<br>114:14,15,18<br>114:19 115:16<br>119:20,23,24<br>120:15 129:24<br>130:11 131:18<br>132:15,15<br>134:15,15,18<br>135:4 136:16<br>142:12 148:17<br>148:18,22,22<br>148:22 149:8<br>149:10,11,12<br>149:13,15,16<br>149:18,23<br>150:10,11<br>151:1,4<br><b>clarify</b> 29:24<br>133:21<br><b>clause</b> 155:22<br><b>clean</b> 140:12<br>149:1<br><b>clear</b> 12:11<br>37:15 38:14<br>51:8 57:10 | 61:10 65:6 67:3<br>73:6 100:15<br>112:4<br><b>clearly</b> 124:24<br><b>client</b> 19:15<br>79:10 99:5<br>104:11,11<br>109:13,14<br>136:25 137:18<br><b>client's</b> 5:6<br><b>clients</b> 10:17<br>11:2 18:11<br>37:16 38:15<br>58:2,21 62:1<br>64:1 75:2,24<br>76:3 80:7 82:15<br>91:3,25 97:10<br>110:2 116:6<br>122:6,8,10,10<br>130:19 131:1<br>135:6 143:21<br>143:22 144:11<br>149:5 150:24<br><b>clipping</b> 42:13<br><b>clock</b> 85:9<br>100:19<br><b>close</b> 9:10 86:3<br><b>closed</b> 8:12<br><b>closely</b> 96:21<br><b>closing</b> 8:12<br>32:8<br><b>clue</b> 29:22<br><b>code</b> 82:15<br><b>coerce</b> 39:16<br>40:17 |
|---|---|--|--|

[coercing - confidential]

Page 10

|  |   |   |  |
|--|---|---|--|
| <b>coercing</b> 39:12<br><b>coercive</b> 49:7<br>54:7<br><b>collaboration</b><br>15:9<br><b>collect</b> 12:18<br><b>collected</b><br>139:18 148:13<br><b>colloquy</b><br>131:20<br><b>column</b> 25:15<br>26:1<br><b>come</b> 16:15<br>20:17 35:14,17<br>36:11 39:18<br>45:2 47:13,14<br>50:20 58:6<br>65:18 71:3<br>72:14 78:8 79:3<br>80:12 85:14<br>91:2 126:4,13<br>154:6<br><b>coming</b> 11:15<br><b>commenced</b><br>4:1<br><b>comment</b> 13:10<br>103:22 112:12<br><b>comments</b> 11:5<br>11:10 13:13<br>28:15 33:11<br><b>commission</b><br>18:1<br><b>commit</b> 10:23<br><b>commitment</b><br>13:2 139:23 | <b>committed</b> 9:23<br>10:14 11:2<br>18:10 122:5<br><b>committee</b><br>10:10 16:23,24<br>17:2 22:23<br>24:24 31:10<br>34:3,17 52:13<br>67:18 74:16<br>75:3 91:12 99:2<br>99:5,23 100:1<br>103:20 132:25<br>133:16 136:2<br>151:3<br><b>committees</b><br>100:4<br><b>common</b> 58:25<br>59:4 60:10,13<br>60:16,18,22<br>61:12 62:4,5,8<br>64:14 65:16,18<br>65:21 66:12,13<br>67:4,11 76:3<br>120:22,23<br>121:10,19,24<br>122:4,8 124:17<br>125:16,18<br>126:16 143:1,5<br><b>communicate</b><br>113:22<br><b>communicated</b><br>113:23<br><b>communication</b><br>25:1 132:24<br><b>communicati...</b><br>25:5,8 | <b>community</b><br>83:14<br><b>company</b> 7:18<br>58:5 82:25<br>98:20<br><b>company's</b><br>48:15<br><b>compensable</b><br>96:11 112:7<br>113:19 123:3<br><b>compensation</b><br>37:17 38:15<br>46:25 54:6 64:1<br>75:25 76:3 80:6<br>122:7 123:7<br>136:11<br><b>competitive</b><br>36:8<br><b>complete</b> 27:23<br>38:6<br><b>completely</b><br>5:22 6:16 11:1<br>77:15<br><b>compliance</b><br>162:6<br><b>complicated</b><br>61:11<br><b>component</b><br>37:25 104:24<br><b>compound</b><br>140:5<br><b>comprehensive</b><br>81:15<br><b>compromised</b><br>108:15,16<br>109:4 | <b>compromising</b><br>109:7<br><b>computer</b><br>155:15<br><b>conceded</b><br>156:19<br><b>conceivably</b><br>19:13 110:1<br><b>concern</b> 73:9<br>75:14 113:17<br>159:8<br><b>concerned</b><br>159:12<br><b>concerns</b> 10:15<br>13:10<br><b>conclude</b><br>136:20<br><b>concluded</b><br>161:19<br><b>conclusion</b> 7:25<br>20:10<br><b>conditions</b> 69:1<br><b>confer</b> 7:3 8:20<br><b>conference</b><br>44:8,12,15,17<br>44:23 45:1<br><b>confidence</b><br>52:11<br><b>confidences</b><br>110:9<br><b>confident</b> 77:15<br><b>confidential</b><br>19:1,14 20:2,5<br>64:19 68:21<br>73:3,20,24 81:2<br>94:8 137:18 |
|--|---|---|--|

[confidential - counsel]

Page 11

|  |   |  |   |
|--|---|--|---|
| 143:14<br><b>confirm</b> 161:11<br><b>confirmation</b><br>35:2 37:1<br><b>conflict</b> 62:24<br>62:24<br><b>confront</b><br>156:24<br><b>confrontation</b><br>8:14 155:22<br><b>conjunction</b><br>103:19<br><b>conlan</b> 5:15,18<br>6:9 7:14 13:4,5<br>15:10 19:14<br>20:1,4 24:14,21<br>25:8 29:7 32:19<br>36:10,14,20<br>41:16,22,24<br>42:25 43:10<br>45:19,21,25<br>46:9 47:11,18<br>47:22 49:17,21<br>50:8,16,21,23<br>52:19 53:7<br>54:10,11 55:8<br>55:13 57:11<br>58:4 62:25 63:4<br>63:13,15 64:19<br>65:12 68:21<br>69:20,22 70:8<br>71:5 73:1,4,21<br>73:25 75:6<br>78:19 80:17<br>86:12 92:22<br>93:1 94:9,13,14 | 94:24 95:1,23<br>102:17 105:16<br>105:19 108:7<br>109:7,18,23<br>110:8 114:22<br>114:25 115:21<br>115:24 116:21<br>116:23 117:10<br>117:16 124:7,8<br>151:17 152:21<br>153:16 154:22<br>154:22 155:9<br>155:17,20<br>156:20,25<br>157:8,25<br>158:25 159:5<br><b>conlan's</b> 6:17<br>8:9 25:4 53:19<br>54:20 58:13<br>154:25 155:1<br>157:13,15,17<br><b>connection</b><br>47:17 84:12<br>130:17<br><b>consents</b><br>109:14<br><b>consider</b> 8:7<br>67:12,13 74:15<br><b>considered</b> 8:2<br>49:3<br><b>consistency</b><br>20:14<br><b>constance</b> 1:22<br>162:3,18<br><b>constant</b> 17:13 | <b>constructed</b><br>41:10<br><b>contained</b><br>152:11<br><b>contains</b> 83:4<br><b>context</b> 97:5,15<br>97:17 134:4<br><b>contingency</b><br>62:2,6<br><b>continuation</b><br>5:6 9:2<br><b>continue</b> 24:13<br>137:1<br><b>continued</b><br>93:21 139:23<br><b>contradicted</b><br>7:15<br><b>contributed</b><br>61:12<br><b>contribution</b><br>142:25 143:5<br><b>conversation</b><br>28:9,14<br><b>conversations</b><br>28:8<br><b>convey</b> 74:15<br><b>coordinated</b><br>91:16<br><b>copies</b> 26:4<br><b>copy</b> 22:21 23:6<br>23:13 121:6<br>141:6,9,13,16<br><b>corner</b> 17:23<br><b>corporate</b> 2:4<br>55:9 | <b>correct</b> 24:6,7<br>24:11 25:8,17<br>26:19,25 27:5<br>28:24 29:10<br>31:1 34:25 35:4<br>35:7 36:22 37:2<br>39:3 45:15<br>53:15 56:23<br>59:1,7 60:22<br>61:20 62:2<br>65:24 68:12<br>82:22 98:14<br>103:1,8 117:23<br>117:24 126:6<br>126:17 130:19<br>131:2 142:16<br>142:20,21<br>145:23 147:14<br>147:17,20<br>161:13,14<br><b>correctly</b> 146:3<br><b>correspondence</b><br>5:7,20 152:11<br><b>cosmetic</b> 81:17<br><b>cost</b> 60:20<br>61:18 123:15<br><b>costs</b> 60:24<br>61:23 123:8,9<br>123:12<br><b>counsel</b> 4:8<br>5:16,17,23 7:4<br>7:16,16 8:21<br>28:14,21 31:12<br>32:4,13 33:12<br>49:11 51:11<br>52:5,22 53:8 |
|--|---|--|---|

**[counsel - criticized]**

Page 12

|   |  |  |  |
|---|--|--|--|
| 63:6 68:1,7,10<br>68:14 70:23<br>71:14 77:16<br>91:14 93:16<br>109:2 129:23<br>137:25 139:19<br>144:2 152:9<br>154:22 155:1<br>160:11 161:16<br><b>count</b> 25:25<br>29:16 30:11<br>32:2,12,12<br>132:11<br><b>country</b> 45:3<br>51:12 52:23<br>53:5 96:21<br><b>county</b> 1:1,9<br><b>couple</b> 57:8<br><b>course</b> 7:17<br>29:14 35:1<br>41:17 47:12<br>48:16 73:18<br>88:22 93:25<br>99:6 100:7,13<br>100:13 102:4,5<br>106:5 109:23<br>113:24 124:20<br>143:10 150:4,4<br>156:25<br><b>court</b> 1:1,13 4:2<br>4:12,23 5:3<br>6:13,22,25 7:9<br>8:2,5,11,24 9:8<br>9:11,17 11:4,4<br>11:6,18 12:7,7<br>13:8,13,15 14:8 | 14:15 15:23,24<br>17:22 18:2,19<br>19:17,21,25<br>20:4,8,12,24<br>21:6,14,20 22:7<br>23:11 27:23<br>29:23 30:5<br>32:13,15,24<br>33:5,18 35:22<br>35:22 36:3,3,16<br>37:2 38:5,18<br>40:5,8,13 41:2<br>41:12 42:15<br>43:13,17 46:18<br>51:11 52:23<br>53:4,5 55:17,20<br>59:3,3 61:6<br>62:14,17,21<br>64:10,13 65:6<br>65:12 66:1,6,21<br>66:23 67:5,10<br>67:12,16,20<br>69:7,15,18,24<br>70:3 71:20<br>72:11,15,18,21<br>73:16,19,23<br>74:5,10,13,21<br>75:18 76:10,14<br>76:21 77:7,11<br>77:18 78:1,13<br>79:16 84:20,24<br>85:4,8,12,17,21<br>86:1 88:15 89:5<br>89:8,20,21<br>92:19 93:8,9,16<br>93:23 94:1 | 95:11 98:8,12<br>103:25 106:3,6<br>106:9,14,17<br>107:21 110:14<br>110:19,21<br>111:3,12,16,19<br>114:23 115:5<br>121:24 123:25<br>124:6,22 125:3<br>125:23 126:2<br>127:12,21,24<br>128:14,20,24<br>129:3,6,9,12<br>132:5 134:3<br>135:22 137:5,7<br>137:10,14,22<br>137:25 138:7,9<br>138:14 140:7<br>140:13 141:12<br>141:23 144:23<br>146:11,19,23<br>147:1 148:21<br>151:10,15<br>152:8 153:2,9<br>153:11,22,23<br>154:2,3,5,7,11<br>154:13,16<br>155:25 156:14<br>157:11,16<br>158:15,18<br>159:7,13,24<br>160:1,5,8,11,19<br>160:22,24,25<br>161:7,14,16,18<br>162:4,19 | <b>court's</b> 11:12<br>15:19 16:3<br>110:23 113:12<br>151:13 153:15<br>157:22 158:1,7<br>158:13 159:6,9<br>159:21 161:5<br><b>courthouse</b> 1:9<br><b>courtroom</b><br>63:21 71:4<br>77:17 108:2<br><b>courts</b> 5:11,12<br>5:12 15:25<br>65:10 66:13<br>89:1 158:21<br>160:11<br><b>cover</b> 119:2<br><b>covered</b> 31:18<br>71:11<br><b>covers</b> 25:4<br><b>crc</b> 1:22 162:3<br>162:18<br><b>created</b> 103:18<br>134:5<br><b>creates</b> 15:12<br><b>credibility</b> 8:10<br>18:7,9,23 20:12<br>20:18 63:8<br>154:20 155:11<br>155:12 157:18<br><b>credible</b> 124:12<br><b>criteria</b> 104:23<br>105:12 120:19<br><b>critical</b> 159:9<br><b>criticized</b> 14:22 |
|---|--|--|--|



[criticizing - diagnosed]

Page 13

|   |   |   |  |
|---|---|---|--|
| <b>criticizing</b><br>18:21<br><b>cross</b> 3:4 22:11<br>128:9<br><b>crr</b> 1:22 162:3<br>162:18<br><b>crux</b> 98:12<br><b>crystal</b> 12:11<br>73:6<br><b>cups</b> 105:18<br><b>current</b> 53:11<br>106:24 107:25<br>120:16 122:20<br>122:21 130:11<br>132:15 148:22<br>162:7<br><b>currents</b><br>150:15,16<br><b>cut</b> 64:8<br><b>cynical</b> 82:17<br><b>cyprus</b> 98:21<br>99:2,2 | 162:23<br><b>dates</b> 112:13<br><b>daubert</b> 88:20<br>88:25 89:9,20<br>95:2,6 113:13<br><b>davies</b> 145:14<br>145:19<br><b>day</b> 9:4,6,8,12<br>10:5,16 46:12<br>48:5,6 52:7,8<br>54:21 56:14<br>61:6 82:7 83:14<br>84:19 114:22<br>124:15,16<br>127:5 130:5<br>156:20<br><b>days</b> 25:13<br>161:12<br><b>dc</b> 2:10<br><b>deal</b> 17:10<br>49:23 96:3<br>105:19 127:6<br>128:6,7,18,24<br>128:25 133:8<br>150:21<br><b>deals</b> 129:2<br><b>dealt</b> 11:22<br><b>decades</b> 66:13<br>107:14<br><b>deceased</b> 83:1<br><b>december</b><br>87:21<br><b>decent</b> 101:12<br><b>decide</b> 8:6<br>12:14 18:19 | <b>decided</b> 147:20<br><b>decision</b> 7:5<br>8:12 11:7,8,12<br>11:19 12:13<br>16:4 20:3 95:6<br>113:13 127:13<br>154:6 158:1<br><b>decisions</b> 69:4<br><b>declarations</b><br>14:3<br><b>declined</b> 109:2<br><b>deducted</b> 62:5<br><b>deeply</b> 157:6<br><b>defendant</b><br>136:18<br><b>defense</b> 88:11<br>155:19<br><b>definitely</b> 78:4<br>105:24<br><b>degree</b> 15:4<br><b>delay</b> 135:7<br><b>demand</b> 108:12<br><b>denied</b> 36:3<br>98:3,4 156:22<br><b>department</b><br>91:22<br><b>depend</b> 9:14<br><b>depending</b><br>61:14 66:15<br>132:10<br><b>deposed</b> 126:6<br>126:8<br><b>deposition</b><br>131:16 133:5,7<br>134:17 141:7 | <b>deps</b> 1:25<br><b>depth</b> 96:9<br><b>describe</b> 89:21<br>92:24 104:3<br>111:19,22<br>134:3 149:10<br><b>described</b> 27:13<br>30:11 31:24<br>32:2<br><b>description</b><br>3:12 27:3,8<br><b>deserve</b> 82:16<br><b>deserved</b> 58:3<br><b>design</b> 72:7,12<br><b>designation</b><br>161:4<br><b>detail</b> 13:1<br><b>detailed</b> 50:15<br>156:12<br><b>details</b> 28:18<br>90:16<br><b>determination</b><br>18:8 61:7 66:24<br><b>determine</b> 14:2<br>51:7 106:12<br>120:6<br><b>determined</b><br>18:9 61:3<br><b>develop</b> 13:6<br><b>developed</b><br>21:13 46:6,7<br>56:1 99:19,22<br>104:6,8<br><b>diagnosed</b><br>104:12,13,15<br>104:16 123:10 |
| <b>d</b>  |   |   |  |
| <b>d</b> 2:7,9 22:2<br>87:8<br><b>dachille</b> 46:1<br>50:21,24 56:19<br>102:17 117:17<br>118:1<br><b>dais</b> 20:19<br><b>damages</b> 145:6<br>146:3<br><b>daniels</b> 88:10<br><b>date</b> 1:11 28:10<br>48:10 114:7  |   |   |  |



[diagnosed - drive]

Page 14

|   |   |  |  |
|---|---|--|--|
| 123:16<br><b>die</b> 135:6<br><b>difference</b><br>65:10,17<br><b>differences</b><br>92:5<br><b>different</b> 32:18<br>63:20 71:4<br>101:9 112:6<br>133:1,12,12,13<br>140:9 148:16<br>150:11,11<br><b>differently</b><br>148:20<br><b>difficult</b> 107:16<br><b>difficulty</b> 101:3<br><b>dime</b> 139:14,18<br>139:25 140:3<br>141:1 142:17<br><b>direct</b> 121:3<br>124:10,13,20<br><b>direction</b><br>158:13 159:6<br>159:21<br><b>directly</b> 10:8<br>15:5 23:8 79:18<br>157:12,14<br><b>disaffiliation</b><br>45:15 47:19<br>55:25 75:9,13<br>119:9<br><b>disagree</b> 17:21<br>20:23 34:18<br>78:13 80:11<br>156:6 | <b>disclose</b> 55:13<br>56:11 159:11<br><b>disclosed</b> 43:9<br>43:21 157:1<br><b>disclosing</b> 63:5<br>155:9<br><b>disclosure</b><br>11:25 12:1,2<br>84:11<br><b>discounting</b><br>74:7<br><b>discuss</b> 46:3<br>152:9 160:2<br><b>discussed</b> 28:25<br>29:14 45:11<br>51:18 156:15<br><b>discussing</b><br>28:17 45:19<br>109:9 145:5<br><b>discussion</b><br>19:11 28:13<br>47:24,24 62:20<br>75:5<br><b>discussions</b><br>16:12 28:3,23<br>29:2 32:3,19<br>34:7,13 37:11<br>45:12 47:21<br>68:25 73:15<br>75:6 81:2 99:7<br>99:11 117:13<br>129:22 143:15<br>156:12<br><b>dislikes</b> 42:16<br><b>dismiss</b> 34:17<br>35:7 36:1,4 | 38:12 40:23<br>60:8 97:25 98:4<br>98:4 135:11<br><b>dismissal</b> 27:15<br>108:20<br><b>dismissed</b> 34:4<br>36:7 112:15,22<br>135:13<br><b>disparage</b><br>119:25<br><b>disqualification</b><br>13:18 14:14<br>16:5 20:25<br>21:17 64:7<br><b>disqualify</b><br>12:14 17:20<br><b>distress</b> 135:14<br><b>district</b> 1:13<br>66:23 114:23<br><b>ditch</b> 54:16<br><b>divided</b> 90:1<br><b>division</b> 1:1<br><b>docket</b> 1:2 4:6<br>161:5<br><b>document</b> 5:14<br>24:18 25:15,24<br>26:5,5,13,15,15<br>28:10 29:20<br>30:3 33:7,9,17<br>103:2,10,15<br>110:7 146:14<br>151:16,22,25<br>152:1,15 153:7<br>155:20 158:5<br><b>documents</b><br>6:11,14 22:24 | 32:25 34:22<br>147:12 155:13<br>156:7 157:7,9<br>158:16,19,22<br>158:24<br><b>doing</b> 10:14<br>19:7 35:20<br>68:19 72:3<br>74:22 129:10<br>129:14<br><b>dollar</b> 46:16,21<br>123:24 150:13<br><b>dollars</b> 47:8<br>65:22 123:11<br>128:7,8 155:19<br><b>double</b> 66:10<br><b>doubt</b> 33:12<br><b>doug</b> 46:1<br>102:17 117:16<br>117:25 118:1<br><b>downplaying</b><br>138:10<br><b>draft</b> 22:17<br>24:9 25:19<br>26:18 27:3<br>28:15 29:1,8<br>33:13 103:2<br>145:14<br><b>dramatically</b><br>134:16,19<br><b>drew</b> 127:16<br><b>drill</b> 111:10<br><b>drinker</b> 56:9<br>63:6<br><b>drive</b> 2:4 |
|---|---|--|--|

[driven - exactly]

Page 15

|  |  |  |   |
|--|--|--|---|
| <b>driven</b> 75:21,22<br><b>driver</b> 76:7<br><b>drives</b> 75:19<br><b>driving</b> 69:13<br>121:17<br><b>drove</b> 69:14<br>75:18<br><b>drug</b> 17:9<br><b>dual</b> 57:12<br><b>duane</b> 117:16<br>117:18<br><b>due</b> 6:17 60:1<br>155:3<br><b>duly</b> 22:4<br><b>duties</b> 144:4<br><b>duty</b> 91:25<br>92:11,16 144:1<br><b>dying</b> 102:11 | <b>echeverria</b><br>89:13<br><b>echo</b> 13:13<br><b>ecourts</b> 161:8<br><b>ed</b> 53:24<br><b>efficiently</b><br>10:24<br><b>effort</b> 63:18<br>70:11 134:13<br><b>efforts</b> 117:18<br><b>eight</b> 25:24<br>26:5 29:16,21<br>30:12 32:1<br>93:13<br><b>either</b> 11:20<br>36:11 103:10<br>137:8 141:24<br><b>eldon</b> 92:9<br><b>element</b> 130:23<br><b>elements</b> 123:6<br><b>elicit</b> 94:3<br><b>else's</b> 148:10<br><b>email</b> 43:10<br>48:5 103:6<br>153:18<br><b>emails</b> 25:10<br><b>encompass</b><br>153:18<br><b>engage</b> 34:7<br>69:21 98:1<br>108:18<br><b>engaged</b> 108:19<br><b>entered</b> 60:19<br>61:5 67:5<br>147:21 | <b>entering</b> 72:6<br><b>entire</b> 123:20<br><b>entirety</b> 153:18<br><b>entitled</b> 7:10<br>8:4 121:16<br>125:16,18<br>126:15,17<br><b>entity</b> 106:22<br>144:13<br><b>entries</b> 24:13<br>26:7 30:14,18<br>145:2<br><b>entry</b> 13:17<br>24:2,3,23 26:2<br>26:24 27:9<br>28:12,19<br><b>epithelial</b> 105:9<br>120:2<br><b>equivalent</b><br>89:18,20<br><b>eric</b> 121:3<br><b>erik</b> 2:14 5:2<br>117:17<br><b>especially</b> 12:6<br>105:1 123:9<br><b>esquire</b> 2:3,3,9<br><b>essence</b> 27:12<br>144:16<br><b>essentially</b><br>40:16 107:8<br><b>establishing</b><br>60:16<br><b>estimation</b><br>57:18 145:10<br><b>et</b> 10:6 16:21<br>20:14 | <b>ethical</b> 16:25<br>17:16 21:17<br>63:3,4 67:14<br><b>ethics</b> 16:22<br>17:1 19:5 64:6<br>72:2 155:23<br><b>evaluate</b> 21:7,8<br>94:17 117:18<br><b>evaluating</b><br>95:20<br><b>evaluation</b> 8:9<br>15:19<br><b>evd</b> 3:12<br><b>events</b> 14:13,19<br>15:17 113:7<br><b>everybody</b> 9:20<br>77:5 78:2<br><b>evidence</b> 7:22<br>12:1 13:18<br>20:14 29:20<br>72:16 110:13<br>127:13,13<br><b>evidenced</b><br>14:19<br><b>evident</b> 13:11<br><b>eviscerate</b><br>31:17<br><b>evolution</b><br>111:22<br><b>exact</b> 27:3<br>128:2,11,12<br><b>exactly</b> 17:6<br>26:22 60:25<br>72:17 94:2<br>111:1,1 |
| <b>e</b>   |  |  |   |
| <b>e</b> 1:22 2:1,1<br>3:10 22:2 87:8<br>162:1,3,18<br><b>earlier</b> 108:21<br>110:24 141:17<br>146:21<br><b>earliest</b> 150:20<br><b>early</b> 61:15<br>95:18 104:9<br><b>earnings</b> 48:6<br>48:15<br><b>easier</b> 23:4,9<br>144:24<br><b>easily</b> 123:11<br><b>easy</b> 107:12,14<br>159:3  |  |  |   |

**[examination - fee]**

Page 16

|  |  |   |   |
|--|--|---|---|
| <b>examination</b><br>3:1 13:24 22:11<br>86:6 93:20<br>138:18<br><b>examined</b> 22:5<br><b>exceed</b> 123:11<br><b>exceeds</b> 47:1,1<br><b>excel</b> 6:11<br><b>except</b> 75:12<br><b>excepted</b><br>139:17<br><b>excerpt</b> 3:13,14<br>23:3,7 142:5<br>144:21 146:20<br>146:22 147:3,5<br><b>exchanged</b><br>22:18<br><b>excited</b> 130:4<br><b>executive</b> 52:13<br><b>exhibit</b> 43:11<br>44:2,4,5 45:25<br>50:12 52:1<br>54:12,19<br>102:12,16<br>103:7,14,14,15<br>105:19 117:15<br>125:6,7,8,12,12<br>129:18 137:17<br>147:3,5 152:13<br><b>exhibits</b> 125:6<br>141:24 142:3,6<br><b>expect</b> 52:3<br>158:20<br><b>expectations</b><br>13:20 | <b>expected</b> 46:24<br>53:11<br><b>experience</b><br>97:12,13<br><b>expert</b> 55:9<br>71:23,25 88:21<br>95:4 114:21,24<br>115:1,13<br><b>explain</b> 10:17<br>43:5 103:25<br>119:7,8 132:5<br><b>explaining</b><br>21:14 79:8<br><b>express</b> 54:20<br><b>expressing</b> 55:7<br><b>extensive</b> 94:15<br>94:15 95:4,13<br><b>extent</b> 8:8<br>64:20 65:9 67:3<br>67:18 73:23<br>74:17 75:20<br>78:14 108:17<br>110:19 152:14<br>161:2<br><b>external</b> 118:15<br>119:1<br><b>eye</b> 2:9<br><b>eyes</b> 5:8 7:11<br>154:15 157:19<br>157:19 158:12<br>160:5,13 161:1 | <b>fact</b> 6:18 9:21<br>12:16 13:3<br>16:11 56:8,12<br>110:15 127:14<br>152:2 156:3,12<br>157:7<br><b>factor</b> 118:17<br>118:24 121:17<br><b>factors</b> 20:13<br>101:24 102:2<br>119:19<br><b>facts</b> 11:9,9<br>29:19 64:5<br>72:15<br><b>factual</b> 72:22<br>110:17<br><b>faegre</b> 55:24<br>56:9 63:6 92:22<br>109:24 111:14<br>156:21<br><b>failure</b> 54:25<br><b>fair</b> 37:16 40:15<br>52:5 54:5 59:24<br>63:25 70:2,4<br>81:11 100:6<br>103:8 105:22<br>108:6 112:12<br>123:3 128:20<br>129:8,9 139:11<br>140:1 141:3<br>142:19,20<br>144:3 146:23<br>148:7 149:5<br><b>fairly</b> 107:12<br><b>faith</b> 82:14 83:3<br>83:22 150:25 | <b>fall</b> 41:21 43:1<br>44:8,13 99:13<br>120:9<br><b>fall's</b> 44:18<br><b>fallon</b> 92:10<br><b>fallopian</b><br>105:10<br><b>falls</b> 59:23<br><b>false</b> 20:17,17<br>39:10<br><b>familiar</b> 20:24<br>44:1,3 53:17<br>59:14,15 60:15<br><b>families</b> 83:1<br><b>far</b> 6:17 13:4<br>19:22 27:21<br>38:3 59:12,23<br>64:8 69:1<br>107:23 124:2<br><b>fare</b> 151:19<br><b>fast</b> 79:13<br><b>faster</b> 85:24<br><b>fat</b> 141:19<br><b>favor</b> 93:15<br><b>favorable</b> 88:9<br><b>fax</b> 1:24<br><b>fcr</b> 71:8<br><b>february</b> 87:5<br>98:23 111:21<br><b>federal</b> 12:7<br>20:24 51:11<br>52:22 60:19<br>67:10,16<br>160:25 161:5<br><b>fee</b> 60:20 62:2<br>120:23 121:10 |
|  | <b>f</b>   |   |   |
|  | <b>f</b> 22:2 162:1<br><b>facing</b> 135:20  |   |   |

|  |   |  |  |
|--|---|--|--|
| 122:4,8<br><b>fees</b> 60:13,23<br>61:11,18,18,23<br>61:23,25 62:5,5<br>62:6,8 63:13,15<br>121:25<br><b>felt</b> 7:12<br><b>fiduciary</b> 92:16<br>144:1<br><b>figure</b> 46:16,21<br><b>filed</b> 31:13 34:9<br>34:12,17 35:6<br>37:22 38:1 44:5<br>53:1 82:14<br>83:22,23 96:25<br>97:1,21 98:22<br>98:23 99:3<br>103:5 112:14<br>113:10 114:4<br>135:17 161:5<br><b>filibuster</b> 38:7<br><b>filing</b> 27:16<br>113:16 134:12<br>135:25 136:3,8<br>136:15<br><b>final</b> 81:15<br><b>finality</b> 39:7,8<br>39:11 45:13<br>48:24 49:6,24<br>50:9 54:3 57:15<br>57:20,21 58:5<br>76:9 80:4,4,8<br><b>financial</b><br>135:13<br><b>financing</b> 68:12<br>68:17 | <b>find</b> 17:16,19<br>55:17 81:9<br>128:2,11,12<br>159:17<br><b>finding</b> 127:14<br><b>findings</b> 67:6<br>69:18<br><b>fine</b> 4:12 56:7<br>64:25 72:8 73:2<br>84:22 85:6<br>140:13,18<br><b>finite</b> 114:3<br><b>firm</b> 4:15 10:3<br>10:13,15 11:1<br>12:3,8,9 13:2<br>14:24 16:13<br>18:10 22:18<br>55:6 64:4 68:2<br>90:1 92:4<br>138:22 145:20<br><b>firm's</b> 58:24<br><b>firmly</b> 122:5<br><b>firms</b> 11:11<br>61:15 91:24<br>92:6 96:21<br>130:24 140:24<br><b>first</b> 7:1 14:12<br>15:1 16:18<br>17:14 23:25<br>25:14 34:23<br>37:22 38:1 40:9<br>43:9,20 47:23<br>47:24,24 70:7<br>78:19 86:18,19<br>86:22,24 87:3,4<br>90:13,19 92:8,8 | 93:10 95:16<br>96:25 97:1,2,2<br>102:24 103:4<br>103:17 108:11<br>108:12 109:12<br>114:22 121:22<br>122:18 127:5<br>156:20<br><b>fitness</b> 16:24<br><b>five</b> 17:8 48:3<br>138:4 151:16<br>160:8<br><b>flatly</b> 7:15<br><b>flip</b> 26:8<br><b>florida</b> 142:14<br><b>focus</b> 16:1<br>41:15 75:23<br>102:24 149:16<br><b>focused</b> 18:8<br>21:5 64:18 75:7<br>78:25 86:14<br>93:14<br><b>focuses</b> 66:22<br><b>focusing</b> 42:17<br><b>follow</b> 76:16<br>146:12<br><b>followed</b><br>157:22 159:6<br>159:21<br><b>following</b><br>108:20 126:11<br><b>follows</b> 22:5<br><b>font</b> 23:17<br><b>footnote</b> 161:1<br><b>force</b> 114:17<br>136:18 | <b>forced</b> 136:21<br>136:23<br><b>forces</b> 69:20<br><b>foregoing</b> 162:6<br><b>formal</b> 6:2,12<br><b>format</b> 5:25<br>162:7<br><b>formed</b> 91:9,9<br><b>former</b> 55:10<br>63:6,10<br><b>forminard</b><br>31:12 109:1<br><b>forth</b> 25:11<br>30:25 33:24<br>34:2 37:14<br><b>fortress</b> 68:16<br><b>forward</b> 5:9<br>11:13 14:19<br>15:20 21:12<br>26:9 36:1,8<br>37:4,10 60:12<br>116:4 123:22<br>136:13<br><b>forwarded</b><br>24:22 29:8,9<br><b>found</b> 20:13<br>70:17 82:13<br><b>four</b> 28:11<br>29:15,21 52:7<br>69:11 150:5<br><b>fox</b> 2:2 87:5<br>90:13<br><b>foxrothschild...</b><br>2:6,6<br><b>frame</b> 9:2<br>10:24 13:20 |
|--|---|--|--|

[frame - golkow]

Page 18

|  |  |  |  |
|--|--|--|--|
| 98:13<br><b>framing</b> 93:16<br>93:22<br><b>frankly</b> 12:23<br>14:13 33:21<br>63:8 75:14<br>83:23 84:16<br><b>fraudulent</b><br>82:14<br><b>free</b> 18:24<br><b>front</b> 13:23<br>77:12 95:3,9<br>141:7 147:11<br><b>frustrating</b><br>122:1<br><b>full</b> 22:21 23:5<br>40:8 116:11,11<br>116:11 162:6<br><b>fund</b> 58:25<br>60:10,16,22<br>61:12 64:14<br>65:17,18,21<br>75:21,21,22<br>76:2 126:16<br>143:1,5<br><b>funding</b> 47:8<br>68:15,20,24<br>69:3 106:6,9<br><b>funds</b> 17:8 59:5<br>66:12<br><b>further</b> 3:7<br>84:23 129:22<br>147:8 151:8<br><b>future</b> 10:11<br>81:16 106:25<br>107:3 130:11 | 131:19 146:1<br>148:22<br><b>futures</b> 132:13<br>150:15,16<br><br><b>g</b><br><br><b>gaap</b> 118:19<br><b>gain</b> 100:8<br><b>gained</b> 94:19<br><b>galvanize</b> 83:24<br><b>game</b> 148:5<br><b>garner</b> 45:17<br>53:11<br><b>gary</b> 98:6<br><b>gasparovic</b><br>102:17<br><b>gears</b> 114:20<br><b>general</b> 27:8<br>31:11 61:9 68:4<br>109:2 126:14<br><b>generally</b> 60:14<br>93:15 101:17<br><b>generals</b> 107:4<br>150:16<br><b>generous</b> 153:5<br><b>gerel</b> 91:12<br><b>getting</b> 27:21<br>58:2 93:3 117:8<br>122:7<br><b>gilbert</b> 28:5<br><b>give</b> 8:4,25 9:20<br>23:5,16 33:16<br>42:10 45:13<br>50:9 54:1 58:1<br>75:24 79:15<br>80:7 118:17,18 | 125:1 141:9,16<br>146:16 158:19<br>158:22 159:25<br><b>given</b> 8:3 22:21<br>100:14 134:17<br>155:4<br><b>gives</b> 9:11<br>42:11<br><b>giving</b> 21:6<br>157:4<br><b>glad</b> 31:8<br><b>global</b> 55:10<br>95:21 96:2,3<br><b>go</b> 5:9 12:9 13:1<br>19:19,21 25:12<br>30:20 35:23<br>38:8,20 56:19<br>60:9 64:6 66:9<br>67:1 71:12,21<br>73:7 86:3 92:21<br>93:7,17 96:18<br>102:10,12<br>103:6,12<br>109:14 111:12<br>115:8 118:6<br>119:3 123:6,15<br>125:3,5,14<br>127:2 128:1<br>129:6,20<br>133:18 137:22<br>138:1 140:22<br>148:24 155:12<br>157:12,14<br>158:2 160:9<br><b>goal</b> 76:6 | <b>goes</b> 63:7,8<br>69:9,13,13<br>86:12 100:3<br>130:6 134:2<br>154:21 155:11<br>160:17<br><b>going</b> 8:15 9:3<br>9:6,9 11:8,9,13<br>12:11 13:11<br>14:19 15:19<br>16:1,3,9,16<br>21:7 23:20,24<br>29:23 30:23<br>33:10,16,23<br>37:11 38:5,6<br>45:24 46:15<br>53:14,18 64:4<br>65:21 70:16<br>72:13 77:21<br>79:9 85:21<br>87:22 92:20,21<br>93:10,17<br>102:12 107:14<br>110:11 115:2,9<br>118:5,6 122:4,9<br>124:9,25<br>125:21 127:2<br>127:12 128:12<br>128:19 129:20<br>131:7 135:4,5,6<br>135:7,7 138:1<br>139:17 144:3<br>149:1 154:7<br>160:12<br><b>golkow</b> 1:24 |
|--|--|--|--|

|   |  |          |  |
|---|--|----------|--|
| <p><b>golkow.com</b><br/>1:25<br/><b>golomb</b> 91:18<br/><b>good</b> 4:2,10,12<br/>4:17,20,23 5:1<br/>5:3 22:14,15<br/>38:18 59:22<br/>79:21 142:4<br/>148:24 150:25<br/><b>gotten</b> 49:6<br/>129:15<br/><b>grabbed</b> 18:20<br/><b>grammatical</b><br/>30:24<br/><b>granted</b> 12:15<br/><b>great</b> 19:12<br/>63:24<br/><b>greater</b> 51:6<br/><b>greedy</b> 63:21<br/><b>green</b> 25:12<br/>26:10 77:22<br/><b>grew</b> 27:7<br/>29:16,25 30:1<br/><b>grid</b> 46:25<br/>49:12,13 120:5<br/>120:6,11<br/><b>gross</b> 61:13<br/><b>groundwork</b><br/>41:14<br/><b>group</b> 46:8<br/>68:24 107:7<br/>114:3<br/><b>groups</b> 151:3<br/><b>grown</b> 25:24<br/>26:23</p> | <p><b>guess</b> 36:10<br/><b>guy</b> 18:10 19:12<br/>19:12 101:12<br/>124:12 148:12<br/>153:5<br/><b>gynecological</b><br/>114:6</p> <tr> <td data-bbox="537 562 854 621"><b>h</b></td><td data-bbox="537 621 854 1923"> <p><b>h</b> 3:10 22:2<br/><b>haas</b> 2:14 4:25<br/>5:1,2 10:2,21<br/>12:18 14:11,12<br/>14:25 16:14<br/>19:11 31:12<br/>38:2 48:9,14<br/>57:7,9,15 63:18<br/>76:24 77:3,6,9<br/>77:13,14 109:1<br/>117:5,17<br/>120:23 121:3<br/>121:15,21<br/>124:13 125:15<br/>126:12 127:4,8<br/>128:5,16<br/>132:18,23<br/>133:21 151:14<br/>151:15,20,25<br/>155:14 157:8<br/><b>haggle</b> 106:2<br/><b>haggled</b> 108:7<br/><b>haggling</b> 109:9<br/><b>half</b> 17:9 48:3<br/>84:17<br/><b>hand</b> 21:24</p> </td></tr> | <b>h</b> | <p><b>h</b> 3:10 22:2<br/><b>haas</b> 2:14 4:25<br/>5:1,2 10:2,21<br/>12:18 14:11,12<br/>14:25 16:14<br/>19:11 31:12<br/>38:2 48:9,14<br/>57:7,9,15 63:18<br/>76:24 77:3,6,9<br/>77:13,14 109:1<br/>117:5,17<br/>120:23 121:3<br/>121:15,21<br/>124:13 125:15<br/>126:12 127:4,8<br/>128:5,16<br/>132:18,23<br/>133:21 151:14<br/>151:15,20,25<br/>155:14 157:8<br/><b>haggle</b> 106:2<br/><b>haggled</b> 108:7<br/><b>haggling</b> 109:9<br/><b>half</b> 17:9 48:3<br/>84:17<br/><b>hand</b> 21:24</p> |
| <b>h</b>  | <p><b>h</b> 3:10 22:2<br/><b>haas</b> 2:14 4:25<br/>5:1,2 10:2,21<br/>12:18 14:11,12<br/>14:25 16:14<br/>19:11 31:12<br/>38:2 48:9,14<br/>57:7,9,15 63:18<br/>76:24 77:3,6,9<br/>77:13,14 109:1<br/>117:5,17<br/>120:23 121:3<br/>121:15,21<br/>124:13 125:15<br/>126:12 127:4,8<br/>128:5,16<br/>132:18,23<br/>133:21 151:14<br/>151:15,20,25<br/>155:14 157:8<br/><b>haggle</b> 106:2<br/><b>haggled</b> 108:7<br/><b>haggling</b> 109:9<br/><b>half</b> 17:9 48:3<br/>84:17<br/><b>hand</b> 21:24</p>   |          |  |

 **handed** 127:2 **handle** 96:22 **hands** 90:9 **happen** 15:20 73:5 97:24 **happened** 128:25 **happening** 33:22 **happens** 44:22 **happy** 23:4 65:13 **hard** 148:14 **harmful** 86:13 157:3 **he'll** 64:1 **head** 89:25 90:2 **heads** 9:1 **hear** 6:1,25 7:4 13:18 14:6 19:25 40:8 76:24 77:20 129:12 **heard** 11:17 36:20 41:3 44:11 57:19 59:12 87:8,25 110:1 149:19 149:21 155:5 **hearing** 1:6 4:1 7:25 9:23 13:22 43:11 45:24 50:12 54:12,19 89:14,16 93:18 97:25 102:18 132:20,20 | 137:15 155:23 157:8 159:18 **hearings** 6:4 16:12 95:2 **hearsay** 68:23 **help** 78:7 79:4 128:14 131:11 **helpful** 23:18 80:11 **helping** 140:23 **hesitant** 100:2 **hey** 18:22 73:25 74:21 **high** 52:10 **highest** 119:3 **highlighted** 26:10 **hilton** 2:3 4:16 **hire** 70:11,16 70:23 71:15,23 71:25 **hired** 70:8,19 **hoc** 107:7 **hold** 9:10 40:5 48:22 72:11 76:21 135:5 144:13 **holdbacks** 61:5 **holding** 153:15 **home** 155:21 **honest** 18:10 47:12 **honor** 4:11,20 7:7 15:22 16:7 23:14 33:1 35:19 40:4,25 |



[honor - instance]

Page 20

|   |  |  |   |
|---|--|--|---|
| 42:6 43:16<br>62:11 64:3<br>67:21 68:18<br>69:10 76:23<br>77:3,10,15 84:9<br>84:13,15 85:7<br>85:19 86:4<br>89:10 98:15<br>110:12 111:2<br>124:9 137:20<br>141:11 151:18<br>159:15 160:21<br>160:23<br><b>honorable</b> 1:12<br>1:12<br><b>honors</b> 5:1 6:23<br>7:8,24 21:19<br>79:6 85:20<br>86:11 87:23<br>93:1 108:1<br>137:3 152:6<br>157:24 161:9<br>161:17<br><b>hooked</b> 6:20<br><b>hopefully</b> 21:6<br><b>host</b> 130:1<br><b>hour</b> 14:24<br>84:17<br><b>hours</b> 14:5<br>66:16 84:18<br><b>huh</b> 71:1 130:3<br><b>humble</b> 12:24<br><b>hundred</b> 47:8<br><b>hypothetical</b><br>72:22 78:12 | <b>i</b><br><b>idea</b> 9:11,20<br>29:21 56:19<br>59:22 79:21<br>80:3 117:11<br>118:4 144:9<br><b>identification</b><br>146:15 147:4,6<br><b>identified</b> 146:1<br><b>identify</b> 104:12<br><b>iii</b> 1:7 61:7<br><b>illinois</b> 155:23<br><b>imerys</b> 71:10<br>96:6 98:17,18<br>98:20,20,21,23<br>99:1,6 100:8,20<br>100:21 101:1,4<br>101:7 128:6<br>129:25 133:10<br>143:10 149:21<br>150:21,21<br><b>immediately</b><br>14:22<br><b>impact</b> 134:1<br><b>impacted</b> 102:8<br>134:24<br><b>impacting</b><br>101:25<br><b>impeaching</b><br>154:21<br><b>impeachment</b><br>7:13,21 8:3<br>154:20 158:10<br>158:11,12<br>159:5,22 | <b>implication</b><br>6:19<br><b>import</b> 67:11<br><b>important</b><br>16:16 78:2<br><b>impossible</b><br>109:22<br><b>improper</b> 93:19<br><b>impropriety</b><br>17:24 21:10,11<br>21:16<br><b>inaccurate</b><br>115:4<br><b>inappropriate</b><br>32:12<br><b>include</b> 37:5<br>106:24,24,25<br>107:1<br><b>included</b> 37:9,9<br>37:24 107:2,4,9<br>134:23<br><b>includes</b> 50:25<br>106:21<br><b>including</b> 15:17<br>53:9 65:8 150:5<br>158:23,24<br><b>incorporates</b><br>51:25<br><b>increase</b> 112:1<br><b>increased</b><br>134:15<br><b>incredible</b><br>155:14<br><b>incredibly</b><br>156:5,11 | <b>indicate</b> 113:24<br><b>indicated</b> 7:9<br>7:24 51:9 56:8<br>83:24 143:19<br>144:4<br><b>indicates</b> 55:3<br><b>individual</b><br>61:15<br><b>individuals</b><br>127:17<br><b>information</b><br>13:3 19:1,15<br>20:2,5 68:21<br>73:4,20,24 74:1<br>74:6,17,24<br>75:12 76:25<br>86:14 94:7<br>107:18,19,20<br>109:13,18<br>110:18 137:18<br>155:9<br><b>informed</b> 81:23<br><b>ingham</b> 113:13<br>139:20<br><b>ingredients</b><br>83:6<br><b>initial</b> 152:10<br><b>initially</b> 133:14<br><b>injuries</b> 114:10<br>145:6 146:2<br><b>injury</b> 104:14<br><b>inside</b> 78:9 79:5<br>80:12<br><b>insight</b> 100:8<br><b>instance</b> 25:5 |
|---|--|--|---|

[instances - johnson]

Page 21

|                                      |                        |                          |                       |
|--------------------------------------|------------------------|--------------------------|-----------------------|
| <b>instances</b> 7:14                | <b>involving</b> 45:14 | 56:19 57:1,13            | 63:10 80:21           |
| <b>instilled</b> 92:11               | <b>iowa</b> 155:25     | 57:14,19,20              | 83:2,10,22,25         |
| <b>instruction</b><br>157:23         | <b>iqbal</b> 88:21     | 58:1,11 59:6,18          | 106:23 118:22         |
| <b>instrumental</b><br>91:19         | <b>issue</b> 5:15,21   | 60:12 63:5               | 143:6 149:22          |
| <b>intend</b> 151:6                  | 7:5 8:14 11:13         | 64:19,20 65:7            | 152:16 153:21         |
| <b>intends</b> 13:24                 | 11:19 14:2,14          | 69:22 71:14              | <b>james</b> 55:8     |
| <b>intensely</b> 52:15               | 15:13,14,15,15         | 73:8,11,12,21            | 102:17                |
| <b>intent</b> 13:21                  | 15:15 16:2,4           | 74:2,6,18,22             | <b>january</b> 112:15 |
| <b>interaction</b><br>115:23         | 19:15,18 20:4          | 76:8 78:8 79:3           | 112:18 115:3          |
| <b>interest</b> 10:5                 | 20:20 21:1             | 79:21 80:4,8,13          | <b>jeffrey</b> 2:3    |
| 116:24 117:9                         | 31:16 41:13,15         | 80:15 81:3,7,14          | <b>jerry</b> 90:12    |
| 122:6,10                             | 53:24 64:7             | 84:3,7,8 86:20           | <b>jersey</b> 1:1,10  |
| 136:24                               | 65:12 69:12            | 86:23 94:8,17            | 2:5 17:23 89:3        |
| <b>interests</b> 92:1                | 112:21 154:19          | 95:17 96:25              | 91:17 97:22           |
| 143:21,22                            | 160:17                 | 97:1 98:21 99:7          | 114:24 162:5          |
| <b>interim</b> 61:5                  | <b>issued</b> 54:9     | 100:10 101:16            | 162:20                |
| <b>internal</b> 143:14               | 82:7 112:18            | 107:10 108:17            | <b>jim</b> 13:4,5     |
| <b>internally</b> 81:8               | <b>issues</b> 11:14    | 108:25 109:19            | 68:21 70:8 71:5       |
| <b>intimated</b><br>114:21           | 18:13,15,22            | 109:24 110:8             | 71:7,8 78:19          |
| <b>introduction</b><br>134:20 157:10 | 33:2 76:4 86:23        | 114:4 115:17             | 80:17 94:13,14        |
| <b>investigating</b><br>86:23        | <b>j</b>               | 116:1,17,22,24           | 94:24 95:1,15         |
| <b>invitation</b><br>50:24 118:12    | <b>j</b> 94:17         | 117:4,7,9,12,23          | 95:17,23              |
| 159:14                               | <b>j&amp;j</b> 3:13,14 | 118:7,21                 | 105:19 108:7          |
| <b>invite</b> 6:13                   | 11:7,20 12:4           | 119:10 120:15            | 109:7 114:25          |
| <b>involved</b> 10:11                | 31:11,22,22            | 130:9,10,16              | 115:23 116:21         |
| 86:19 90:15                          | 33:7,9,10,12           | 131:15 134:20            | 117:10,11,16          |
| <b>involvement</b><br>70:17          | 37:4,14,17,22          | 135:3,25                 | 152:21 155:17         |
|                                      | 38:1,16 39:1,2         | 136:14 143:9             | 155:20 156:19         |
|                                      | 39:6,11,15,19          | 146:18,21,22             | 156:20,24             |
|                                      | 39:19 41:10,23         | 147:3,5 152:14           | <b>job</b> 9:25 10:12 |
|                                      | 43:4,9 45:13           | 152:14 154:8             | <b>joel</b> 98:6      |
|                                      | 48:23 49:6,22          | 155:13 156:21            | <b>john</b> 1:12      |
|                                      | 50:8,20,24             | <b>j&amp;j's</b> 7:16,16 | 102:17                |
|                                      | 51:19,20,22,22         | 27:16 35:16              | <b>johnson</b> 2:11   |
|                                      | 54:2,4 55:14           | 36:25 46:2               | 2:11,14,14 4:5        |
|                                      |                        | 52:20 57:6               | 4:6,21,22 5:2,2       |



[johnson - know]

Page 22

|   |  |  |   |
|---|--|--|---|
| 7:9,10 14:11,11<br>14:16,16,20,20<br>15:11,11 20:5,5<br>35:2,2,3 43:1,1<br>47:18,18 48:6<br>54:24,24 95:10<br>129:23 130:25<br>130:25 143:13<br><b>johnson's</b> 35:4<br>48:6 129:23<br>143:14<br><b>join</b> 41:21 42:4<br>42:24 69:20<br>118:13<br><b>joined</b> 4:16<br><b>joins</b> 92:22<br><b>joint</b> 83:18 92:1<br><b>jointly</b> 50:21<br><b>jpollock</b> 2:6<br><b>jr</b> 2:7<br><b>judge</b> 7:3 8:16<br>8:20 11:5,21<br>12:13 13:8,9,13<br>13:21 14:5,7<br>15:8 17:15,18<br>18:20 19:17<br>20:20,22,23<br>33:1 34:11 36:6<br>36:6 60:19 61:7<br>66:23,25,25<br>67:2 76:12,13<br>77:2 84:25 85:2<br>91:9 92:9 95:3<br>95:7,9 97:22,23<br>98:3,6 112:22<br>114:22 119:14 | 127:1,15 129:7<br>137:5,6,15<br>147:17,19<br>148:1 152:8,21<br>154:10,14,24<br>155:3 156:19<br>160:1,25<br>161:13<br><b>judges</b> 9:22<br>101:11 129:10<br>129:14 137:9<br><b>judicial</b> 64:14<br>66:4 162:7<br><b>jump</b> 108:4<br><b>june</b> 26:9 28:11<br>111:21<br><b>jurisdiction</b><br>88:16<br><b>jury</b> 32:14<br><b>k</b><br><b>kaplan</b> 34:11<br>36:7 97:22,23<br>98:3 112:22<br><b>kcic</b> 22:24<br>24:22 25:5<br>28:10,13 29:1,5<br>29:6,9,10 34:2<br><b>keep</b> 15:23<br>77:18<br><b>keeping</b> 8:13<br><b>keeps</b> 35:19<br>42:12<br><b>kemp</b> 89:3,8<br><b>key</b> 6:8 54:23<br>104:24 113:7 | <b>kind</b> 70:20<br>129:19<br><b>knew</b> 13:4 35:1<br>48:12,13 52:2,3<br>52:6,16 56:4<br>57:2 69:22,22<br>71:5,6 80:14<br>124:7 151:25<br><b>know</b> 5:11 6:1<br>6:15,21 8:13<br>9:19 10:13<br>12:16 15:24<br>16:22 18:11<br>19:11 20:1,3<br>21:9 26:4 27:7<br>27:10 30:6 34:9<br>36:18 39:19<br>41:2,13 42:16<br>44:4,14 45:23<br>46:12,19,24<br>47:7 49:1,2,3,3<br>49:5,9 50:6,6<br>51:6,23 52:12<br>52:12 54:6,8<br>55:23 56:2,3,4<br>56:12 57:1,14<br>57:15,15,17<br>58:3,4 59:4,9,9<br>59:16,17,19,19<br>59:21,23 60:11<br>60:11 61:4 62:4<br>63:2 64:10,11<br>64:13,15,15,16<br>64:20,24 65:11<br>66:14,16,22<br>67:23 68:9 | 69:10,13,19<br>71:3 73:24 74:8<br>74:9,10,19 75:6<br>75:10,14,23,23<br>76:7 77:5 78:2<br>78:3,4 79:24<br>81:1,6,13,21<br>84:16 85:9<br>86:21,24 87:2<br>88:5,24 89:1,12<br>89:14,20 90:3,4<br>90:5,8,9,11,19<br>90:20,21 91:1<br>91:12,17,18<br>92:5,10,11,14<br>92:17 93:1,2,12<br>93:12,15 94:11<br>94:12,13,18,20<br>94:24,25 95:2,6<br>95:6,8,12,13,14<br>95:15,16,17,20<br>95:23,24,25<br>96:1,1,3,9,10<br>96:16,16,17,17<br>96:18,21,22,23<br>97:3,7,8,20,21<br>97:23 98:9,13<br>98:17,24,25<br>99:19,25,25<br>100:1,4,10,13<br>100:14,14,15<br>100:16,21<br>101:3,3,6,21,21<br>101:24,24,25<br>101:25 102:1,3<br>102:3,5,6,7,8 |
|---|--|--|---|

[know - leigh]

Page 23

|   |   |   |   |
|---|---|---|---|
| 102:13 104:6,7<br>104:7,8,9,14,15<br>104:17,21,22<br>104:23,25<br>105:2,3,4,7,9<br>105:13,25<br>106:10 107:4,5<br>107:7,8,11,17<br>108:11,14,16<br>108:20,23<br>110:25,25<br>111:6,9 112:9<br>112:13 113:7,8<br>113:10,10,11<br>113:11,12,12<br>113:13,15,16<br>113:19,22,25<br>113:25 114:8,9<br>115:6,23,25<br>116:14 117:3,7<br>118:12,15,17<br>118:25 119:3,5<br>119:7,8,9,10,18<br>119:19,19,21<br>119:22 120:5,6<br>120:7,8,11,17<br>122:2 123:4,4,7<br>123:16,19,23<br>123:25 124:1<br>125:10 127:17<br>128:9 131:9,15<br>132:13 133:9<br>133:10 134:10<br>134:11,12,14<br>134:16,19,19<br>134:20,24 | 135:1,1,3,4,6,6<br>135:16 136:6,9<br>136:11,12,22<br>149:12 150:2,3<br>150:13,19,20<br>152:14 153:3<br>154:5 157:24<br>158:2,4,10,14<br>158:24 159:3,4<br>159:9,17<br>160:14,14<br><b>knowing</b> 73:15<br>81:10<br><b>knowledge</b><br>94:15 109:17<br>162:9<br><b>known</b> 13:5<br>56:23 83:5<br><b>knows</b> 32:10<br>36:17 38:2 79:8<br>98:18 110:19<br><b>kuhmo</b> 88:21<br><b>I</b><br><b>I</b> 1:2,12 4:7 22:2<br><b>lack</b> 135:13<br><b>language</b><br>109:11<br><b>large</b> 90:3,5<br>91:5<br><b>larger</b> 23:17<br>66:14,14<br><b>las</b> 44:8,14<br><b>latest</b> 83:10<br><b>latitude</b> 128:10 | <b>law</b> 1:1 4:15<br>20:9 55:6,8<br>64:4 68:2 91:10<br>91:24 130:24<br>140:24<br><b>lawrenceville</b><br>2:5<br><b>lawyer</b> 54:24<br>55:4 70:8 71:15<br>101:24 109:12<br>115:19 156:20<br>156:22<br><b>lawyers</b> 12:18<br>45:2,7 52:9<br>58:13 63:10<br>90:4 92:18 97:9<br>113:23 143:22<br>155:19<br><b>lay</b> 41:14<br><b>lead</b> 53:8 87:17<br>91:11,14<br><b>leader</b> 55:10<br><b>leadership</b><br>51:10 52:22<br>53:4 91:4,15<br>92:6,9,13,15<br>103:20 143:20<br>143:25 145:4<br>149:14<br><b>leading</b> 55:3<br><b>learn</b> 93:5,12<br>94:20 156:25<br><b>learned</b> 57:17<br>57:19 92:20,24<br>109:19,23,25 | <b>learning</b> 90:15<br>90:15<br><b>leeway</b> 125:1<br><b>left</b> 6:8 9:9<br>138:4<br><b>legacy</b> 22:18<br>24:9 25:20<br>26:18 27:4 28:4<br>28:9,13,23<br>29:12,12 32:4<br>34:2,8,13,24<br>36:21,22 37:6<br>38:25 39:10,11<br>45:6 46:10<br>48:14,17 49:3<br>50:9 51:19<br>53:10 72:7 73:1<br>73:11 75:7,17<br>94:25 95:1,24<br>106:21,22<br>107:17 115:24<br>116:10,18<br>118:6 119:8<br>144:8,9 145:5<br>145:15<br><b>legacy's</b> 52:20<br>80:17 117:21<br><b>legal</b> 54:25<br>82:17 83:14<br><b>legion</b> 155:18<br><b>legitimate</b><br>40:18 82:25<br>119:22,24<br>136:16<br><b>leigh</b> 87:16<br>91:10,13 98:24 |
|---|---|---|---|

[length - lunch]

Page 24

|                             |                          |                         |                        |
|-----------------------------|--------------------------|-------------------------|------------------------|
| <b>length</b> 30:3<br>70:18 | <b>lined</b> 29:20       | <b>lives</b> 155:24     | 54:5 57:20,25          |
| <b>lenox</b> 2:4            | <b>lines</b> 17:12       | <b>llc</b> 1:24 2:11    | 58:1 80:2,7            |
| <b>letter</b> 48:10         | 28:11 120:22             | 4:22 81:15              | 100:10 102:18          |
| 50:15,25 52:25              | 125:25 126:4             | <b>llp</b> 2:2,8        | 106:11 123:5           |
| 56:21 83:13,18              | 133:20                   | <b>llt</b> 4:22 81:15   | 124:15 125:7           |
| 102:25 103:5                | <b>link</b> 118:5,6      | <b>local</b> 89:2 161:6 | 129:17 148:14          |
| <b>level</b> 52:10          | <b>linked</b> 114:11     | <b>lodestar</b> 66:15   | <b>looks</b> 26:3      |
| <b>lever</b> 16:15          | <b>listed</b> 24:5,8     | <b>log</b> 22:21 23:5   | <b>lose</b> 41:15      |
| <b>liabilities</b> 83:11    | 26:17 145:14             | 29:15 30:10,14          | <b>lost</b> 100:6      |
| 144:14                      | <b>literally</b> 16:19   | 34:22 144:22            | <b>lot</b> 43:6 66:6,7 |
| <b>liability</b> 73:13      | <b>literature</b> 114:7  | 146:18                  | 81:5 103:21            |
| 80:20,21                    | <b>litigating</b> 107:6  | <b>logo</b> 83:17       | <b>loudly</b> 124:24   |
| 106:23 107:10               | 116:10,12                | <b>long</b> 9:13 11:23  | <b>love</b> 102:11     |
| 116:11,18                   | <b>litigation</b> 1:4,24 | 15:10 38:16             | <b>low</b> 114:17      |
| 117:8 118:22                | 2:14 4:6 7:17            | 52:15 80:1,1            | 136:23                 |
| 118:24 119:5                | 11:10 14:18              | 95:22,22 120:8          | <b>lower</b> 123:18    |
| <b>license</b> 1:22         | 45:4 54:24               | 123:5 137:12            | <b>loyalty</b> 91:25   |
| 162:21                      | 55:14 68:12,15           | <b>longstanding</b>     | <b>ltl</b> 2:11 27:15  |
| <b>life</b> 12:16           | 68:20 69:3,25            | 139:23                  | 34:4,11 38:12          |
| 101:12                      | 71:14,16 72:7            | <b>look</b> 11:22       | 39:2,21 84:7           |
| <b>light</b> 54:25          | 81:18 86:19              | 18:22 25:25             | 97:18,20               |
| 77:22,23                    | 91:16 102:5              | 43:12 47:23             | 108:18,19              |
| <b>likely</b> 15:4          | 103:3 107:13             | 49:12,12 50:12          | 112:14,15              |
| <b>likes</b> 42:16          | 108:13 113:7             | 97:6 101:16             | 113:2,16               |
| <b>limit</b> 123:2          | 134:10 139:22            | 109:22 117:15           | 120:24 121:11          |
| <b>limited</b> 68:5         | 139:24                   | 120:6 122:5,13          | 121:12,18              |
| 120:4                       | <b>litigations</b> 53:5  | 122:14,15               | 122:15 134:21          |
| <b>limiting</b> 13:21       | 104:8                    | 123:13 156:6            | 135:10 136:4           |
| <b>limits</b> 59:17         | <b>little</b> 12:23 23:3 | 156:10                  | 150:14                 |
| <b>line</b> 65:4 109:12     | 64:22 101:2,2            | <b>looked</b> 19:3      | <b>ludicrous</b> 152:4 |
| 125:24 126:18               | 111:10 124:2             | 22:20 54:10             | <b>lunch</b> 7:8       |
| 129:20 130:7                | 125:1 138:9,11           | 113:19                  | 105:18 137:11          |
| 130:16,20                   | 149:20                   | <b>looking</b> 9:6      | 158:8                  |
| 142:8 156:3                 | <b>live</b> 15:24,25     | 18:25 19:1 21:1         |                        |
|                             | 95:5 101:12              | 21:11 28:12             |                        |
|                             | 112:24                   | 39:8 48:24 54:3         |                        |

[m - mean]

Page 25

|  |   |   |  |
|--|---|---|--|
| <b>m</b>   | <b>making</b> 12:13<br>32:13 47:18<br>48:25 67:5<br>158:21  | 49:17 50:17,19<br>50:23 51:2,25<br>53:2,10 58:9<br>95:16 99:16,19<br>99:22 102:21<br>103:16,18,22<br>103:23 104:1<br>105:15,23,24<br>106:7,10 108:8<br>108:10,12,15<br>108:22,24<br>109:3,4,5,10<br>118:14 119:12<br>119:13,17,17<br>123:14 136:12<br>136:13 143:9<br>143:15  | 143:5 144:1<br>151:2<br><b>mdls</b> 92:7<br><b>meadows</b> 90:11<br>91:17 98:25<br><b>mean</b> 14:24<br>28:22 34:6 35:8<br>39:14,18 43:19<br>44:3 45:20 46:7<br>46:22 48:12,25<br>52:2 53:22 57:9<br>61:4 65:24 68:8<br>70:10,11,12<br>74:6 76:15<br>78:18 84:5<br>88:23,23,25,25<br>90:14,16 91:7<br>92:2,8 95:4<br>96:2 97:24<br>99:18,24<br>100:12 101:22<br>101:23 102:4<br>103:4 105:23<br>105:25 106:12<br>107:13 108:9<br>108:17 111:25<br>112:2 113:6<br>115:22 116:3<br>117:2 119:25<br>121:22,22<br>123:14 131:6,8<br>139:16,18<br>140:22 147:21<br>149:11,13<br>150:18 154:23<br>157:12 |
| <b>m</b> 2:3<br><b>made</b> 7:12 15:1<br>31:14 32:9<br>33:21 44:7 45:8<br>45:22 48:9<br>49:16 50:24<br>57:9 69:18<br>70:10,10 82:21<br>83:17 107:2<br>124:13 130:8<br>131:9,12,15<br>133:24 136:14<br>159:18<br><b>magistrate</b> 1:13<br><b>main</b> 55:24<br><b>maintain</b> 7:13<br>10:9 154:1<br>160:12,14,16<br><b>major</b> 113:17<br><b>majority</b> 68:5,8<br><b>make</b> 7:10 16:8<br>20:14 23:3,9<br>34:14 36:22<br>61:7 63:22<br>101:15 107:24<br>120:10 127:14<br>130:21 139:17<br>140:12 148:11<br>154:5 156:14<br>156:18 158:15<br>159:14<br><b>makes</b> 73:6<br>144:24 | <b>manage</b> 90:7<br><b>management</b><br>2:11 4:22 81:15<br><b>managing</b><br>13:19<br><b>mandate</b><br>112:21<br><b>march</b> 44:13<br>108:25 111:16<br>111:18,22<br>121:3<br><b>mark</b> 33:13<br><b>marked</b> 146:15<br>146:18 147:4,6<br><b>mass</b> 44:7 45:8<br>45:22 54:16<br>55:3 83:16<br>89:25 90:2,4<br><b>material</b> 5:8<br>8:9,15 160:13<br><b>materials</b> 8:7,8<br>154:15 159:22<br>159:22 160:6<br><b>math</b> 46:14<br>65:23,24 66:5<br>66:18<br><b>matrices</b> 93:7<br>104:7<br><b>matrix</b> 41:22<br>42:25 43:5 46:3<br>46:5,14,15 47:6<br>47:15 49:2,10 | <b>matter</b> 11:1<br>12:23 19:5<br>63:11,20 68:4<br>68:20 70:24<br>71:13 87:24<br>126:14 135:24<br><b>matters</b> 5:11<br>7:17 13:6 17:10<br>134:24<br><b>mcl</b> 4:7 14:18<br><b>mdl</b> 4:7 13:16<br>14:18 51:11<br>52:22 53:4,9<br>58:24,25 59:3<br>60:10,15,19,21<br>66:22 67:5<br>87:17 91:7,9,9<br>92:8,18 95:3<br>113:22 142:25 |  |

[meaning - multiple]

Page 26

|                        |                       |                         |                       |
|------------------------|-----------------------|-------------------------|-----------------------|
| <b>meaning</b> 155:8   | 109:1,3 118:10        | <b>mid</b> 104:9        | <b>moment</b> 126:14  |
| <b>means</b> 46:20     | 118:11                | <b>middle</b> 32:9      | <b>money</b> 36:22    |
| <b>measure</b>         | <b>megaphone</b>      | <b>mike</b> 83:18       | 58:25 60:9            |
| 118:14 119:4           | 151:21                | <b>miles</b> 19:20,20   | 63:22 65:20           |
| <b>media</b> 13:12     | <b>member</b> 99:1    | <b>milestones</b>       | 66:6,7 75:18,18       |
| 83:9                   | <b>members</b> 52:12  | 102:7                   | 117:11                |
| <b>mediate</b> 34:10   | 52:13                 | <b>million</b> 47:7,9   | <b>month</b> 81:22    |
| 78:25                  | <b>memo</b> 145:5     | 87:6,14,14,15           | <b>months</b> 7:18    |
| <b>mediation</b>       | 156:13                | 88:4,13 106:15          | 47:22 48:1,1,3        |
| 22:23 24:25            | <b>memory</b> 132:8   | 123:11 128:7            | 56:13,16 69:21        |
| 25:4 31:17,19          | <b>mention</b> 44:11  | <b>mind</b> 8:13        | 72:14 74:24           |
| 31:23 32:5,10          | <b>mentioned</b>      | 15:24 63:4              | 155:16                |
| 32:17,21 33:3          | 28:22 91:23           | 77:18                   | <b>morning</b> 4:2,10 |
| 33:16 34:11            | 108:21 139:1          | <b>mindful</b> 10:7     | 4:17,20,23 5:1        |
| 49:4 80:1 97:23        | <b>merely</b> 83:21   | <b>mine</b> 24:15       | 5:3 22:14,15          |
| 98:5 108:17,18         | <b>merit</b> 148:22   | <b>minefields</b>       | 81:13 82:4,6          |
| 147:13 150:22          | 151:4                 | 75:15                   | <b>morphing</b>       |
| <b>mediations</b>      | <b>meritorious</b>    | <b>minimum</b>          | 17:14                 |
| 57:18                  | 114:18                | 155:12,13               | <b>motion</b> 12:14   |
| <b>mediator</b>        | <b>meso</b> 97:9      | <b>mining</b> 98:20     | 13:16 34:17           |
| 147:13                 | 149:16                | <b>minor</b> 153:22     | 35:6 36:1,4           |
| <b>mediator's</b>      | <b>mesothelioma</b>   | <b>minutes</b> 9:9      | 38:12 97:25           |
| 133:14                 | 97:9 99:4 107:3       | 21:4 85:5,10            | 98:3,4 103:5          |
| <b>mediators</b> 98:7  | 107:13 150:15         | 128:2,13                | 135:11                |
| 132:25 133:11          | <b>met</b> 47:25      | 137:11,13               | <b>motions</b> 20:25  |
| 133:16                 | 56:12,15 78:19        | <b>miscarriage</b>      | <b>motivation</b>     |
| <b>medical</b> 123:8,9 | 94:13,14,24,25        | 17:11                   | 64:21                 |
| 123:12                 | 95:23 110:5           | <b>mischaracteri...</b> | <b>motivations</b>    |
| <b>medicine</b> 96:12  | <b>method</b> 117:5   | 127:11                  | 63:2                  |
| 105:6                  | <b>methodology</b>    | <b>missed</b> 89:16     | <b>mountain</b>       |
| <b>meet</b> 27:18      | 145:10                | <b>mississippi</b>      | 130:13                |
| 43:4 46:2 57:1         | <b>mic</b> 77:2       | 156:2                   | <b>move</b> 26:9 36:8 |
| 105:12 116:9           | <b>michelle</b> 91:11 | <b>mistake</b> 97:7     | 124:5,10,18           |
| 118:2 120:18           | 91:13                 | <b>mixed</b> 112:3      | <b>moving</b> 36:1    |
| <b>meeting</b> 44:25   | <b>microphones</b>    | <b>model</b> 107:12     | <b>multiple</b> 33:11 |
| 45:8 90:19             | 77:19                 | 107:15                  | 41:5 94:22,22         |

## [multiple - objection]

Page 27

|   |   |  |  |
|---|---|--|--|
| 95:2 133:25<br>150:2,2<br><b>murдика</b> 12:17<br>44:11 71:7,9<br>78:21 90:19<br>95:15,18 130:9<br>157:8<br><b>mute</b> 77:19<br><b>myers</b> 2:8 4:21<br>88:15 | 62:21 66:1<br>75:11,11 96:16<br>96:18 107:19<br>112:9 124:18<br>124:20,25<br>160:19<br><b>needed</b> 7:12<br>80:4,4 107:18<br>107:18,20<br><b>needs</b> 21:6<br>42:10 78:3<br><b>negligence</b><br>17:11<br><b>negotiate</b> 38:12<br>122:3<br><b>negotiated</b><br>95:25 96:1,7<br><b>negotiating</b><br>38:13 46:8<br>78:20 109:10<br><b>negotiation</b><br>109:5<br><b>negotiations</b><br>78:20,21 95:13<br>100:14 108:19<br>150:21<br><b>neither</b> 35:18<br><b>nelson</b> 95:9<br><b>never</b> 19:4<br>70:10,10 74:2<br>92:15 108:7<br>131:4,4,7<br>156:22<br><b>new</b> 1:1,10 2:5<br>17:23 54:16<br>89:2 91:17 | 97:22 114:23<br>162:5,20<br><b>news</b> 10:2 12:5<br><b>niall</b> 145:13<br><b>nice</b> 4:3<br><b>nine</b> 93:13<br><b>nj</b> 1:22 162:21<br><b>noncash</b> 51:8<br>118:21<br><b>nonsense</b> 12:4<br><b>north</b> 97:21<br><b>notary</b> 162:4<br>162:19<br><b>note</b> 76:24<br><b>notice</b> 64:14<br>66:5<br><b>notwithstandi...</b><br>33:5 67:15<br><b>november</b><br>56:20 57:12<br>153:18<br><b>number</b> 3:12<br>24:18 25:10,15<br>25:15 26:4,13<br>26:15 27:8 44:5<br>46:13,23 47:2<br>51:5,6,8 59:22<br>68:14 78:8 79:3<br>80:13,17,18,19<br>80:22,23 81:2,8<br>90:22,22,24<br>92:13 96:19,23<br>100:23,24,25<br>101:16,18,22<br>101:22 102:8,9<br>111:20 112:1,7 | 112:7,25 113:4<br>113:8,9,9,15<br>120:15,16,18<br>123:1 125:23<br>132:3 134:14<br>134:15,18<br>146:16 150:10<br>150:11 158:3<br><b>numbers</b> 66:16<br>102:11 123:21<br>148:15 149:25<br><b>numerous</b> 83:3   |
| <b>n</b>  | <b>n</b> 2:1 87:8<br>162:1<br><b>n.w.</b> 2:9<br><b>name</b> 21:24,25<br>23:25 24:13<br>25:13,14<br><b>narrative</b> 10:21<br>42:11,11 93:11<br><b>narrow</b> 15:14<br>153:24<br><b>national</b> 10:2<br>12:20 63:19<br><b>nationally</b><br>91:15<br><b>nature</b> 73:5,14<br>94:16 96:9<br><b>natures</b> 93:6<br><b>nauseam</b> 10:21<br><b>necessarily</b><br>42:15<br><b>necessary</b> 39:6<br>51:7<br><b>need</b> 5:20,21<br>13:3 17:19   | <b>o</b>   | <b>o</b> 16:20 162:1<br><b>o'dell</b> 14:17,23<br>82:21 83:7<br>87:16 91:10,13<br>92:4 98:25<br>113:21 145:4<br><b>o'melveny</b> 2:8<br>4:21<br><b>oath</b> 21:22<br>85:15 109:16<br>138:15<br><b>object</b> 6:3,3,24<br>39:15 69:5<br>84:16 93:11,21<br>110:11 115:2<br>125:21 157:10<br><b>objected</b> 6:5<br>152:19<br><b>objecting</b> 5:17<br>131:24<br><b>objection</b> 7:21<br>29:18,24 32:7 |

[objection - ovarian]

Page 28

|  |   |   |  |
|--|---|---|--|
| 36:13 40:25<br>46:17 55:15<br>58:19 68:18<br>69:25 71:17<br>72:9 78:11,14<br>84:9,21 124:1<br>127:10 140:5<br>152:24 154:23<br>154:25 159:3<br><b>objections</b><br>130:2,13 131:3<br>137:17 152:13<br>152:14,15,16<br>153:25 154:14<br><b>objective</b> 35:4<br><b>obstruction</b><br>83:2<br><b>obtained</b> 68:6<br>94:7<br><b>obviously</b> 9:13<br>10:20 46:23<br>66:22 154:2,5<br>159:15<br><b>occur</b> 87:19<br><b>october</b> 43:9<br>44:6,18 48:2,9<br>48:10 53:7<br>56:20 57:8 97:2<br>112:15<br><b>offer</b> 31:14<br>47:13 51:20<br>57:1 58:5 93:19<br>130:17,19,23<br>157:25 159:4<br><b>offered</b> 27:18<br>45:25 49:2 | 56:18 108:25<br>122:13 148:15<br>151:17<br><b>official</b> 91:20<br><b>officially</b> 91:7<br>97:24<br><b>oh</b> 59:15<br><b>ohio</b> 155:23<br><b>okay</b> 7:5 9:12<br>13:8 24:16 33:5<br>33:18 43:17<br>50:11 62:8,9<br>70:22 72:18<br>77:17 78:24<br>85:4,22 87:4<br>89:6 102:20<br>104:12 112:11<br>112:20 121:4<br>125:14 126:2<br>129:8 131:13<br>132:7 137:14<br>137:19 138:7<br>141:18,21<br>146:5,22 148:1<br>160:15<br><b>old</b> 104:12,16<br>123:15<br><b>omm.com</b> 2:11<br><b>once</b> 17:24 18:5<br>91:9 98:3<br>151:21 157:8<br><b>ones</b> 149:9<br><b>ongoing</b> 14:15<br>100:21<br><b>op</b> 53:24 | <b>open</b> 83:13<br><b>opened</b> 86:22<br><b>opening</b> 108:12<br><b>opinion</b> 65:10<br>110:13,15<br>112:18<br><b>opponent</b> 70:24<br><b>opportunity</b><br>8:5,6 14:1,6<br>64:2 81:24<br>115:6 155:5<br><b>oppose</b> 136:1<br>137:1<br><b>opposed</b> 37:18<br>37:20 38:10<br>40:1,11,12,14<br>40:15,16 59:13<br>117:6 135:24<br>136:9,17,25<br><b>opposing</b> 5:17<br>5:23 18:11 41:6<br>41:9 60:7 84:6<br>84:7 122:12<br><b>opposite</b> 116:16<br><b>opposition</b> 82:8<br>82:22 83:25<br>84:3 105:1,1<br><b>opt</b> 49:10 53:10<br>53:11 116:5<br><b>optimization</b><br>45:15 47:19<br>53:23 55:25<br>57:4 75:8,13<br>119:9<br><b>option</b> 37:5,9<br>39:11 45:13,14 | 50:9 51:19,23<br><b>options</b> 52:10<br><b>oral</b> 6:1,22 7:2<br>17:14 103:22<br><b>order</b> 7:12<br>13:16,17 21:6<br>23:21,23,24<br>40:17 60:15,19<br>61:4 67:4,11<br>91:20 106:12<br>147:21,23<br><b>ordered</b> 34:11<br>98:5,5,5<br><b>organization</b><br>83:17<br><b>orienting</b> 42:9<br><b>ought</b> 64:5<br><b>outrageous</b><br>155:22<br><b>outside</b> 7:16<br>63:6,10,20<br>70:23 71:14<br>126:17<br><b>ovarian</b> 24:9<br>25:20 26:19<br>27:4 28:14,15<br>28:18,21 31:10<br>32:3 46:8 52:14<br>53:8,12 80:23<br>80:23 81:17,23<br>88:3,12 95:14<br>97:3 105:6,9<br>106:1,24,25<br>107:16 108:23<br>118:24 119:4<br>120:1,2 129:24 |
|--|---|---|--|



[ovarian - piece]

Page 29

|   |   |   |  |
|---|---|---|--|
| 130:10 131:18<br>145:4,5,9,15<br>149:13,15,18<br>149:23 150:14<br><b>overall</b> 8:10<br>80:24<br><b>overrule</b> 29:24<br><b>overruled</b><br>78:14<br><b>overtures</b> 122:3<br>122:3<br><b>owe</b> 91:25<br><b>own</b> 92:14<br>143:21   | 30:12,12,13<br><b>paid</b> 122:21<br>139:25<br><b>papantonio</b><br>83:19<br><b>papers</b> 18:19<br><b>paragraph</b><br>51:13<br><b>parcel</b> 155:7<br><b>pardon</b> 77:25<br>147:15<br><b>parfitt</b> 91:11,14<br>113:21<br><b>part</b> 35:9,10,11<br>37:8,11 48:15<br>49:4,4 50:1<br>58:9 96:4 99:20<br>105:19 113:22<br>124:10 143:1,6<br>150:13,20<br>153:3,11,13<br>155:6 157:4<br>158:23<br><b>partial</b> 153:6<br><b>participants</b><br>61:15<br><b>participate</b><br>49:14<br><b>participating</b><br>130:24<br><b>participation</b><br>73:8<br><b>particular</b> 6:9<br>11:13 14:2 30:3<br>127:4 139:1 | <b>parties</b> 7:25<br>13:12 14:1 15:6<br>67:9 158:20<br>161:2<br><b>partner</b> 90:12<br>91:10<br><b>passed</b> 114:17<br><b>patently</b> 13:11<br><b>path</b> 58:4<br><b>patient</b> 9:22<br>10:20 151:19<br><b>pay</b> 10:5,16<br>39:5 79:22 80:6<br>80:6 96:18<br>100:17 124:15<br>124:16<br><b>paying</b> 63:4<br><b>payment</b><br>122:16,17<br><b>payout</b> 132:12<br><b>peanut</b> 105:17<br><b>pending</b> 34:24<br>92:17 139:9<br><b>pennies</b> 123:24<br><b>people</b> 12:19<br>17:2 75:7 84:2<br>119:8<br><b>percent</b> 12:19<br>53:11 60:20,20<br>60:20,23,24<br>61:13,13,17,18<br>61:18,19,25<br>62:1,13 65:21<br>66:19,19<br>116:10 156:6 | <b>percentage</b><br>64:16 66:17<br><b>perfect</b> 44:7<br>45:8,22 83:17<br><b>period</b> 15:10<br>34:12 37:21<br>38:10 57:10<br>58:21 69:20<br>75:25 81:22<br>99:10<br><b>peritoneal</b><br>105:10<br><b>perjured</b> 158:9<br><b>perks</b> 1:22<br>162:3,18<br><b>permission</b><br>151:14<br><b>permit</b> 71:20<br><b>permitted</b><br>158:6<br><b>person</b> 17:4<br>46:2<br><b>personal</b> 88:16<br><b>perspective</b><br>75:24 112:5<br>113:18<br><b>pertains</b> 149:14<br><b>petition</b> 31:13<br>34:9<br><b>ph</b> 1:24<br><b>pick</b> 100:18<br><b>picture</b> 100:15<br><b>piece</b> 53:24<br>54:9,11 80:24<br>80:25 |
| <b>p</b>  |   |   |  |
| <b>p</b> 2:1,1 5:13,14<br>151:17 158:24<br>160:3,18<br><b>p.j.cv.</b> 1:12<br><b>p.m.</b> 9:8 161:19<br><b>page</b> 3:3 25:24<br>25:25 26:9<br>29:16 30:10<br>31:25 32:1,2,2<br>32:11,12 38:24<br>51:13 60:5<br>103:15 120:22<br>120:25 121:1,2<br>125:6,7,11,23<br>125:24 129:20<br>130:6,12,14<br>133:19 142:8<br><b>pages</b> 25:25<br>26:5,23,24 27:7<br>27:9 29:17 |   |   |  |



**[pike - position]**

Page 30

|                         |                      |                        |                       |
|-------------------------|----------------------|------------------------|-----------------------|
| <b>pike</b> 2:4         | 121:11 149:22        | 159:18                 | 121:2,5,9 124:5       |
| <b>pitch</b> 56:19      | <b>play</b> 20:18    | <b>pointedly</b> 17:19 | 124:9,23 125:4        |
| <b>pitched</b> 45:6     | 115:25               | <b>points</b> 67:9     | 125:25 126:3          |
| 57:5                    | <b>players</b> 148:5 | 124:13 140:14          | 127:20,25             |
| <b>place</b> 1:9 12:6   | <b>playing</b> 12:21 | <b>pollock</b> 2:3 4:9 | 129:4,7,10,14         |
| 38:19 44:8 49:8         | <b>please</b> 4:3    | 4:10,14 5:7,10         | 129:16 137:3,9        |
| 158:5                   | 21:23 35:21          | 7:23 8:18,22           | 140:5 141:14          |
| <b>places</b> 158:3     | 40:4 48:22           | 9:14,18,21             | 141:15,18,21          |
| <b>placitella</b> 76:21 | 55:20 85:12          | 11:12,21 14:9          | 141:25 142:4          |
| 76:23 77:4,8,25         | 86:17 132:6          | 15:13,16,21            | 142:25 146:9          |
| 91:18                   | 138:1                | 16:6 17:25 18:3        | 146:12,13,24          |
| <b>plaintiff</b> 65:8   | <b>plenary</b> 1:6   | 19:19,23 20:7          | 146:25 147:9          |
| 139:20                  | 102:18 103:14        | 20:11 21:19            | 148:24 149:3          |
| <b>plaintiff's</b>      | 125:7,12             | 23:12,13 24:15         | 151:8,18              |
| 102:18 158:24           | <b>plus</b> 66:10    | 29:18 32:7,20          | 152:17,18             |
| <b>plaintiffs</b> 12:18 | 134:19               | 33:1,8,21 35:19        | 153:4,21              |
| 14:18 22:22             | <b>point</b> 5:19,20 | 36:13 40:4,6,25        | 154:18 155:1          |
| 24:24 45:2,7            | 11:23 16:8           | 42:6,8,10 46:17        | 156:1 157:21          |
| 52:5,9 54:5             | 17:16,22 18:6        | 46:19 48:22            | 158:15,18             |
| 58:13 64:15             | 26:21 28:8           | 55:15,18 58:19         | 159:23 161:17         |
| 67:18 74:16             | 33:21 39:7           | 62:11,15,19,22         | <b>portion</b> 126:16 |
| 75:2 88:9 91:24         | 47:22 49:5 54:2      | 63:12 66:4             | 131:25                |
| 92:12,17,18             | 54:2 55:24 56:3      | 68:18 71:17            | <b>porto</b> 1:12     |
| 139:13                  | 56:14,15 65:2        | 72:9,12,17,19          | 12:13 13:21           |
| <b>plan</b> 14:21 35:2  | 68:5,16 69:10        | 77:21 78:11            | 14:5,7 17:15          |
| 35:14,16 36:2,5         | 70:12,18 77:17       | 79:6 84:9,15           | 18:20 114:22          |
| 36:8,11 37:1,4          | 78:18,18 79:20       | 85:6,17,19,23          | 119:14 129:7          |
| 37:5,8,10,17            | 90:18,18,20,24       | 86:3,4,8,11,16         | 152:21 156:19         |
| 38:13,16 39:13          | 91:2 92:21 97:8      | 87:22 89:10,15         | <b>porto's</b> 13:13  |
| 40:16,22,23             | 99:17 100:17         | 92:25 93:9,18          | <b>posed</b> 153:16   |
| 41:10 49:7 54:7         | 109:6,17 110:4       | 93:25 94:1,4,5         | <b>posing</b> 107:25  |
| 75:21 76:7 80:5         | 121:18 122:23        | 98:14,16 106:4         | <b>position</b> 10:10 |
| 80:5 81:14,21           | 127:22 131:5,7       | 106:5 108:1,5          | 11:6 25:3 30:22       |
| 81:25 83:10,25          | 131:10 135:16        | 110:15,16,20           | 39:9 58:24 70:7       |
| 84:3,7,10 113:2         | 139:16,16            | 111:4,13,17            | 72:5,25 100:11        |
| 114:16 120:24           | 148:24 152:5         | 115:8,9,11             | 110:2 133:1           |

[position - proposal]

Page 31

|  |  |   |   |
|--|--|---|---|
| 143:20 150:18<br>160:12<br><b>positioned</b> 15:6<br>15:7<br><b>possible</b> 153:25<br><b>possibly</b> 59:17<br><b>potential</b> 67:11<br>99:8 146:1<br><b>powder</b> 1:3<br><b>practice</b> 19:5<br>55:10,11<br><b>preceded</b><br>140:11<br><b>preceding</b> 89:1<br><b>precisely</b> 21:15<br><b>precision</b> 17:7<br><b>preference</b><br>57:10 158:7<br><b>preferred</b> 37:1<br>48:15 57:6,16<br>69:23 117:5,6<br>149:22<br><b>prejudice</b> 14:15<br><b>prejudicial</b><br>64:8,11<br><b>preliminary</b><br>5:11 67:6 69:11<br><b>premise</b> 92:25<br><b>prepare</b> 6:12<br><b>prepared</b> 6:11<br>22:22 23:2,7<br>27:14,17,17<br>28:2 31:9,10,14<br>31:16,22 33:6,8<br>35:17 46:1<br>50:20 118:1 | 162:6<br><b>preparing</b><br>35:25 36:2<br><b>present</b> 2:13<br>27:18 31:11,22<br>36:4 41:22<br>42:25 107:3<br>108:25 131:18<br>132:11<br><b>presented</b><br>13:23 14:3 36:2<br>51:19 58:4<br>99:25 133:6,7<br>150:7<br><b>president</b> 2:14<br><b>press</b> 10:2 12:6<br>12:20 14:23<br>53:24 54:8,23<br>56:22,24 62:20<br>63:19 82:7,12<br><b>presume</b> 25:6<br><b>pretty</b> 11:23<br>86:2 90:3,3<br>100:15 130:4<br><b>previously</b> 14:4<br>27:13 28:2 37:7<br>133:2<br><b>price</b> 51:1<br><b>pricewaterho...</b><br>51:7 118:16<br><b>prima</b> 67:17<br><b>primarily</b> 99:3<br><b>primary</b> 104:25<br><b>princeton</b> 2:4<br><b>principle</b><br>121:23 | <b>prior</b> 6:4 28:22<br>56:16 90:17,25<br><b>private</b> 96:1,2<br><b>privilege</b> 7:13<br>22:21,23 23:5<br>24:25 25:4<br>29:15 30:10,14<br>31:17,20,24<br>32:5,10,17,21<br>33:3,18 34:22<br>144:21 146:18<br>147:13 153:7<br>153:21 159:8<br>159:12 160:15<br>160:16<br><b>privileged</b> 31:5<br>33:16 143:14<br>147:20,24<br>160:6,13<br><b>privy</b> 143:13<br><b>pro</b> 11:10<br><b>probably</b> 68:14<br>77:11 82:10<br>98:18 101:9<br>132:21 138:9<br>141:21<br><b>problem</b> 12:9<br>19:8 77:16<br>128:15<br><b>problems</b> 135:8<br><b>procedure</b><br>118:19<br><b>proceed</b> 6:24<br>18:17<br><b>proceeding</b><br>35:3 89:20 95:9 | <b>proceedings</b><br>59:5 161:19<br>162:7<br><b>process</b> 6:17<br>12:21 29:4<br>31:19 48:16<br>57:7,18,18<br>97:20 99:20<br><b>produce</b> 6:6,7<br><b>product</b> 108:10<br><b>products</b> 1:4<br>4:6<br><b>proffer</b> 12:2<br>63:12,14 67:3<br><b>proffered</b> 150:4<br><b>prognosticating</b><br>66:24<br><b>prohibit</b> 72:3<br><b>projection</b><br>120:9<br><b>promise</b> 16:12<br>72:14<br><b>prongs</b> 157:4<br><b>proof</b> 69:2<br><b>proper</b> 7:22<br><b>proposal</b> 24:10<br>24:22 25:20<br>26:19 27:4<br>28:18 30:11<br>36:21 45:7,18<br>47:17 48:17,18<br>48:25 49:10,10<br>49:16,18,19<br>51:9,17 52:21<br>52:24,25 53:19<br>58:9,10 59:6,18 |
|--|--|---|---|

**[proposal - questioned]**

Page 32

|   |   |  |   |
|---|---|--|---|
| 59:20 60:7,9,12<br>60:12 71:8<br>72:10 73:5,7,10<br>75:8,11 79:24<br>80:24 82:2 96:5<br>96:18 102:16<br>105:2 106:21<br>106:22 107:2<br>107:18 116:4,4<br>116:5,9 117:4<br>117:19,20,21<br>117:22 122:14<br>122:14,15<br>123:23 129:24<br>130:8 131:2,9<br>131:11,12,18<br>131:23,24,25<br>132:8,14,18<br>133:5,10,11,14<br>133:23 134:1<br>134:21,21<br>144:8,10<br>145:16 150:5,9<br>150:13,20<br><b>proposals</b> 133:4<br>150:2<br><b>propose</b> 75:1<br>136:1<br><b>proposed</b> 14:21<br>39:19 41:22<br>42:25 48:13<br>80:15 81:14<br>83:22 114:13<br>130:19 131:2<br>135:25 143:6<br>153:22 | <b>proposing</b> 39:1<br>49:23<br><b>prosecute</b><br>115:16<br><b>protect</b> 10:16<br>11:2 92:1<br><b>protected</b> 33:17<br><b>proven</b> 157:2<br><b>provide</b> 29:6<br>30:2 33:9,10,12<br>33:14 49:24<br>53:2 60:13 61:5<br>76:2 104:22<br>118:14,25,25<br>119:3 129:19<br>136:10,11<br>158:11<br><b>provided</b> 23:22<br>29:1,7 76:25<br>95:17 132:12<br>157:16 158:23<br><b>provides</b> 81:22<br><b>providing</b><br>22:16<br><b>provision</b> 82:1<br><b>provisions</b> 61:3<br><b>provoking</b> 55:7<br><b>psc</b> 23:22 58:24<br><b>public</b> 57:12<br>136:14,14<br>162:4,19<br><b>publicly</b> 53:19<br><b>publish</b> 53:23<br><b>pulled</b> 145:2<br><b>purely</b> 96:17 | <b>purported</b><br>133:15<br><b>purportedly</b><br>128:22<br><b>pursuant</b> 60:18<br>161:6<br><b>pursue</b> 58:15<br>115:16 151:6<br><b>pursuing</b> 12:4<br>90:21 148:19<br>148:20 149:9<br>149:12 151:1<br><b>pushing</b> 38:2,2<br>97:4,4,16<br><b>put</b> 15:17 23:22<br>37:4,14 47:6<br>51:13 57:16<br>60:12 66:16<br>76:1,1 79:22<br>95:20 108:22<br>108:23 109:3,6<br>116:4 122:9<br>134:4 136:13<br><b>putting</b> 35:11<br>37:10 123:22<br>156:17<br><br><b>q</b><br><br><b>qsf</b> 145:14<br><b>qualification</b><br>104:22<br><b>qualifications</b><br>88:22 140:11<br>145:15<br><b>qualified</b><br>105:14 | <b>qualifying</b><br>120:19<br><b>quarter</b> 48:6<br><b>question</b> 11:24<br>15:18 17:18<br>19:13 27:22<br>30:6 32:23<br>35:20 38:4 40:9<br>40:10 41:3<br>42:17,20,22<br>43:19 53:15<br>55:21 60:2,3<br>62:18 65:14<br>68:20 71:20<br>72:20,22,23<br>73:16 76:16<br>78:15 79:2,2,10<br>79:11,18 84:11<br>84:14,14 86:12<br>93:1,11,14,24<br>98:13 101:9,15<br>106:3 107:24<br>107:25 110:17<br>112:8 124:3<br>126:12,13,25<br>127:14,15,16<br>127:19 128:17<br>128:21 129:13<br>130:15 133:18<br>135:22 140:8,8<br>140:9 142:11<br>144:4 148:8,25<br>152:10 153:15<br>156:24 158:14<br><b>questioned</b><br>120:21 121:14 |
|---|---|--|---|

**[questioned - redactions]**

Page 33

|  |  |  |  |
|--|--|--|--|
| 131:16<br><b>questioning</b><br>21:4 32:9 126:5<br><b>questions</b> 21:7<br>29:25 40:7<br>64:25,25 65:4,5<br>69:11,12 76:25<br>85:18 93:17<br>103:21 108:3<br>110:23,24<br>128:18 135:21<br>137:4,8 138:4<br>138:10 142:24<br>143:2 151:9,16<br><b>quibble</b> 115:10<br><b>quibbling</b> 16:7<br><b>quickly</b> 10:19<br>10:24 151:12<br><b>quite</b> 12:25<br>76:17 78:1 86:1<br><b>quote</b> 109:11<br>128:2,11,12<br><b>quoted</b> 82:24<br><b>quoting</b> 82:11 | <b>range</b> 61:11<br>119:1 122:25<br>132:10<br><b>rate</b> 84:18<br><b>reach</b> 98:1<br><b>reaction</b> 127:16<br>132:22<br><b>read</b> 6:14<br>125:14 129:21<br>130:7,15,22<br><b>reading</b> 56:22<br>56:24 141:17<br>146:3<br><b>ready</b> 18:15,16<br>47:13 88:17<br>125:10<br><b>real</b> 11:24 12:3<br>15:25 19:7<br>132:3<br><b>reality</b> 18:6<br><b>really</b> 7:13<br>32:10 64:12<br>65:1,11 84:5<br>93:2 101:7<br>108:17 110:12<br>112:8 154:19<br>154:21 156:8<br>158:17<br><b>reason</b> 12:3<br>18:18 104:25<br>122:11,11<br>136:9,24,25<br>151:23 152:1<br><b>reasonable</b><br>37:17 38:15<br>54:5 59:24 64:1 | 75:25 76:3 80:6<br>97:14 102:1<br>120:8 122:7<br>123:7 136:11<br>136:15,19,20<br>149:5 150:23<br><b>reasons</b> 41:6<br><b>rebut</b> 156:4<br><b>recall</b> 22:16,25<br>41:23 42:2,23<br>43:2,3 44:21<br>127:7,9,17<br>129:21 138:22<br>143:2,10 156:7<br><b>receive</b> 7:24<br>46:25 111:6<br>152:15<br><b>received</b> 43:6<br>110:18 132:24<br>152:1,12<br><b>receiver</b> 104:2<br><b>recess</b> 85:11<br>137:24 160:10<br><b>recessed</b> 41:20<br>42:23<br><b>recklessly</b> 63:9<br><b>recognize</b> 67:15<br>109:21<br><b>recognized</b><br>115:24,24<br><b>recommend</b><br>5:18 152:20,21<br>152:24<br><b>recommenda...</b><br>153:17 | <b>recommenda...</b><br>154:9<br><b>reconciling</b><br>148:14<br><b>reconvene</b> 85:7<br>138:2<br><b>record</b> 7:15<br>8:11,13 14:3<br>21:12 24:18<br>86:2 89:8 110:8<br>137:23 138:2<br>140:12 153:3<br>154:6 158:23<br>160:9<br><b>records</b> 115:7<br>154:18 155:13<br><b>recoverable</b><br>67:4<br><b>recovered</b><br>60:21 139:14<br>140:3,25<br>142:17<br><b>recovery</b> 61:14<br>64:17 66:15<br><b>recross</b> 3:6<br>138:18<br><b>recuse</b> 11:18<br><b>red</b> 29:20 77:22<br><b>redacted</b> 5:25<br>153:23<br><b>redactions</b> 7:11<br>7:12 153:22<br>154:10,11<br>156:11,11<br>159:15,16 |
| <b>r</b>   |  |  |  |
| <b>r</b> 2:1 22:2 87:8<br>162:1<br><b>raise</b> 21:23<br><b>raised</b> 67:9<br>115:20<br><b>raises</b> 9:14<br><b>ramifications</b><br>16:10 19:20<br>21:1   |  |  |  |

[redirect - resolved]

Page 34

|   |   |  |   |
|---|---|--|---|
| <b>redirect</b> 3:5,7<br>9:15 86:6<br>128:10 147:8<br><b>reduced</b> 66:17<br><b>reductions</b><br>119:18<br><b>reese's</b> 105:18<br><b>refer</b> 56:8<br><b>reference</b> 28:9<br>28:13 125:22<br>160:16<br><b>references</b> 23:7<br><b>referred</b> 15:9<br>17:1 54:8 68:6<br><b>referring</b> 54:13<br>74:13<br><b>refers</b> 15:14<br><b>reflect</b> 115:7<br>136:15<br><b>reflected</b> 43:8<br><b>regard</b> 8:14 9:1<br>10:8 11:7,8<br>13:1,14 16:4<br>20:18 30:2<br>62:24 64:22<br>69:25 74:2<br>76:16 77:12<br>79:18 91:15<br>94:2 114:21<br>124:7 128:22<br>132:13 137:16<br>137:18 154:17<br>154:19,24<br>159:10 160:3,3<br>160:12,17<br>161:8 | <b>regarding</b> 13:5<br>28:4,14 68:19<br>68:24 73:21<br>74:1 93:5 94:12<br>99:8 101:16<br>115:16 120:22<br>121:18 126:25<br>129:23 130:19<br>131:2 152:13<br>156:12,13<br><b>regards</b> 41:15<br><b>regularly</b> 44:23<br><b>rejection</b> 113:2<br><b>related</b> 11:19<br>81:16 107:10<br><b>relates</b> 154:20<br>160:18<br><b>relating</b> 109:13<br><b>relationship</b><br>15:8 68:2,24<br>72:6<br><b>relationships</b><br>68:7<br><b>release</b> 53:24<br>54:9,23 56:23<br>82:7,12<br><b>relevance</b> 68:19<br>69:6 70:3 84:10<br><b>relevancy</b><br>62:17 64:12,22<br>69:2<br><b>relevant</b> 14:13<br>15:5,18 19:13<br>62:23 63:1<br>67:19 69:3<br>110:1 111:8 | <b>relief</b> 67:17,20<br><b>rely</b> 157:3<br><b>remember</b><br>40:10 82:10<br>111:15 127:14<br>128:21 155:6<br>156:7,8<br><b>remembers</b><br>127:15<br><b>remind</b> 14:1<br><b>remote</b> 64:8,11<br>64:22<br><b>remove</b> 118:21<br><b>render</b> 7:4<br><b>reneged</b> 132:24<br><b>reneging</b><br>132:19 133:15<br><b>reorganization</b><br>81:14<br><b>reorient</b> 144:20<br><b>repeat</b> 42:19<br><b>repeatedly</b><br>15:13 116:20<br><b>rephrase</b> 60:4<br>72:23 93:23<br><b>replies</b> 161:12<br><b>report</b> 145:10<br><b>reported</b> 1:21<br><b>reporter</b> 162:4<br>162:20<br><b>reports</b> 95:5<br><b>represent</b> 6:18<br>68:9 130:16,25<br><b>representation</b><br>109:13,24<br>130:21 157:1 | <b>represented</b><br>7:18 55:14 99:1<br><b>representing</b><br>2:7,11 14:17<br>91:3 97:10<br>110:2 139:12<br>143:21 156:23<br><b>represents</b><br>142:13<br><b>request</b> 13:16<br>67:16<br><b>require</b> 130:22<br>160:19<br><b>required</b> 21:18<br>130:24<br><b>requires</b> 96:8<br>96:14<br><b>resist</b> 82:17<br><b>resisted</b> 97:16<br>122:2,3<br><b>resisting</b> 83:10<br><b>resolution</b><br>28:18 37:1,23<br>37:24 39:20<br>51:2 52:8 57:4<br>57:6 58:23 59:1<br>65:19,20 72:7<br>72:12 76:7<br>81:16 83:22<br>90:21 95:21<br>97:4,15,17 98:2<br>99:8 143:2,6<br><b>resolve</b> 14:21<br>83:10 84:8<br><b>resolved</b> 92:13<br>119:6 |
|---|---|--|---|

## [respect - rules]

Page 35

|  |   |  |   |
|--|---|--|---|
| <b>respect</b> 9:22,25<br>10:13 30:17<br>60:1 108:2<br>142:12 144:8<br>155:3 | <b>review</b> 147:16<br><b>reviewed</b> 27:10<br>51:10 52:21,24<br>147:19<br><b>rid</b> 17:24 117:8<br><b>right</b> 6:22 8:14<br>8:21 11:21<br>15:19 16:11<br>18:15 21:20,24<br>22:20 23:2 24:1<br>24:10,12,22<br>25:1,5,14,21<br>26:3,6,8,16<br>27:1 28:15,16<br>28:18 29:9,17<br>30:13,25 31:3,6<br>32:6 33:14 34:4<br>34:6,14,21 35:3<br>35:5,10,15<br>36:24 39:16,22<br>40:13,22,24<br>41:8,11 44:9,10<br>44:13,17,20,23<br>45:4,14,24 46:3<br>46:6,10,16 47:5<br>47:5,9,10,11,15<br>47:19,22 48:7<br>48:12,16,19<br>50:10,17,21<br>51:3,15 52:23<br>53:12,17,20<br>54:6,17,21 55:1<br>55:11 56:11,14<br>56:17 57:8,13<br>58:15,18 60:14<br>61:1,16,22 62:7 | 62:18 64:9<br>65:22 66:10<br>67:24 68:2,7<br>69:19 70:9,14<br>71:16,24 72:2,3<br>72:4,5,8 73:2<br>73:21 74:3,4,7<br>74:19,20 75:19<br>76:17 78:1<br>81:11,19,25<br>82:4,8,19 83:7<br>83:11,14,15,25<br>84:3,8 86:1<br>89:7 92:21,22<br>93:3 98:15<br>103:4 110:21<br>112:16 121:7<br>125:3 128:4<br>129:3,6 130:12<br>137:11,14,22<br>138:7 139:4,7<br>139:15 140:1<br>140:14,20<br>141:4,6,9<br>142:15,22<br>143:6,8,23<br>144:5,6,11,15<br>144:17,18<br>145:22,25<br>146:4,8,19<br>147:24,25<br>149:1,6 154:16<br>156:18 157:4<br>159:13 160:1<br>160:22 | <b>rights</b> 6:18<br><b>risk</b> 119:19<br>135:19<br><b>ristesund</b> 87:8<br>87:10<br><b>road</b> 16:10<br><b>role</b> 29:5 71:13<br>89:23 90:25<br>91:1,4,15,20,22<br>91:23 92:9,15<br>115:25 119:11<br>130:9 143:25<br>143:25 149:14<br><b>roles</b> 53:4 92:6<br><b>rolled</b> 59:20<br>79:25 122:16<br><b>rothschild</b> 2:2<br><b>roughly</b> 99:14<br>100:20<br><b>rounds</b> 108:16<br><b>rpc</b> 17:16,19<br>18:25 109:11<br>155:8<br><b>rpcs</b> 62:15<br><b>rsa</b> 1:22 162:3<br>162:18<br><b>rukhsanah</b><br>1:12<br><b>rule</b> 15:15,15<br>161:6<br><b>ruled</b> 33:2<br>152:21<br><b>rules</b> 19:2 20:9<br>20:14 21:17<br>63:3,4 72:3<br>100:3 |
|--|---|--|---|



[ruling - shared]

Page 36

|   |   |  |  |
|---|---|--|--|
| <b>ruling</b> 154:3,4<br><b>rulings</b> 113:13<br><b>run</b> 5:12 129:4<br><b>russo</b> 98:6  | 114:19 120:3<br><b>scientific</b> 83:4<br>114:7<br><b>scope</b> 19:9<br>113:6 134:9<br>154:4<br><b>scott</b> 28:5<br><b>screen</b> 109:22<br><b>screw</b> 129:8<br><b>screwed</b> 101:10<br><b>seal</b> 161:5<br><b>seasoned</b> 55:9<br><b>seated</b> 4:3 22:8<br>85:13 138:1<br>152:10<br><b>second</b> 5:24<br>16:18 24:1,3<br>27:16 31:13<br>34:8 114:4,12<br>114:20 127:1<br>135:17 136:6,8<br>156:5 157:4<br><b>secret</b> 65:7<br>156:21<br><b>secretive</b> 31:21<br><b>section</b> 89:25<br>90:1,2,5 91:1<br><b>sections</b> 90:2<br><b>see</b> 4:3,13 11:5<br>23:5,25 24:14<br>24:19,23 25:14<br>26:2,4,10,13<br>27:10 28:8<br>29:15 31:5,7<br>43:8 45:25<br>48:10 51:4,4,8 | 51:12 58:6,9<br>72:13 84:12<br>97:6 104:17<br>145:7,11,17<br>154:23 158:3<br><b>seeing</b> 16:13<br><b>seek</b> 115:15<br><b>seeking</b> 60:8<br><b>seen</b> 19:5,21<br>51:16,16 52:25<br>53:1 59:8,9<br>103:2 110:7<br>117:23 154:2<br><b>self</b> 10:5<br><b>sell</b> 116:17<br><b>sending</b> 34:1<br><b>senior</b> 90:12<br><b>sense</b> 20:15<br>156:15 158:16<br><b>sent</b> 34:23 48:5<br>76:24 83:13<br>117:23<br><b>sentence</b> 118:4<br><b>separate</b> 61:24<br>62:3 129:2<br>133:4,4<br><b>separately</b><br>152:9<br><b>september</b><br>11:16 129:22<br>130:7,8 132:14<br>133:6,24,25<br>134:8,10,11,16<br>150:6<br><b>serious</b> 11:1<br>40:18 114:10 | <b>seriously</b> 10:12<br><b>serve</b> 98:6<br><b>served</b> 91:14<br>98:25 155:2<br><b>services</b> 1:24<br><b>set</b> 74:19<br>142:23<br><b>setting</b> 21:13<br><b>settle</b> 129:24<br>130:10<br><b>settled</b> 139:15<br>140:3 141:3,5<br>142:18<br><b>settlement</b><br>41:22 42:25<br>49:12,17 50:17<br>50:19 51:24<br>53:10 59:25<br>75:19 76:2<br>99:16,18,21<br>100:9,11 102:1<br>105:4 116:7,8,9<br>130:17 131:25<br>143:9,15<br>148:15 150:23<br><b>seven</b> 20:13<br>25:24 29:16<br>30:12 31:25<br>93:13 122:19<br>161:12<br><b>share</b> 20:1,5<br>23:12 31:15<br>33:6 46:2 63:15<br>68:21<br><b>shared</b> 19:14<br>46:9 58:13 |
| <b>s</b>  |   |  |  |
| <b>s</b> 2:1 3:10 87:8<br>87:8<br><b>sandbag</b> 155:20<br><b>sargon</b> 89:11<br>89:14,16<br><b>saw</b> 9:7 29:8<br>34:21 53:7 80:4<br>103:5 132:21<br>153:23,23<br><b>saying</b> 6:19<br>18:14 39:7<br>43:20 66:3 71:3<br>82:24 97:11<br>100:16 120:16<br>122:22 152:3<br><b>says</b> 6:5 28:20<br>117:16,17,25<br>147:23 152:22<br>156:18<br><b>sbrody</b> 2:11<br><b>scenes</b> 71:6<br><b>schedule</b><br>122:17,17<br><b>schneider</b> 15:9<br>33:2 98:6<br>147:17,19<br>148:1<br><b>school</b> 20:9<br><b>science</b> 96:12<br>105:6,8 114:1,2 |   |  |  |

[shared - speculate]

Page 37

|   |   |  |  |
|---|---|--|--|
| <p>64:19 92:3<br/>99:16 110:8<br/>111:8 143:9<br/>145:4<br/><b>sharing</b> 18:25<br/>63:13 77:16<br/>145:14<br/><b>sheet</b> 6:11<br/>22:17 23:4,8<br/>24:9 25:11,20<br/>26:18 27:4,7,12<br/>27:13,14,17,18<br/>27:19 28:2,4,15<br/>28:24,25 29:1,2<br/>29:8 30:16 31:5<br/>31:7,8,11,15,20<br/>31:21,25 32:1,3<br/>32:4,18,22<br/>33:10,15 34:23<br/>104:22 108:24<br/>131:14,16<br/><b>sheets</b> 33:23<br/>34:2 69:1 150:3<br/><b>shift</b> 132:22<br/>135:1<br/><b>shifted</b> 134:18<br/><b>shoes</b> 73:11<br/>116:1<br/><b>short</b> 59:23<br/>79:13<br/><b>shortly</b> 44:7<br/><b>shoved</b> 155:15<br/><b>show</b> 13:17<br/>31:8 158:17,17<br/><b>showed</b> 19:11<br/>56:21</p> | <p><b>showing</b> 83:4<br/><b>shows</b> 114:1<br/><b>sic</b> 104:1<br/>149:21<br/><b>sick</b> 83:1<br/><b>side</b> 52:14<br/>115:19 116:17<br/>144:17<br/><b>sidetrack</b> 76:15<br/><b>sidley</b> 55:10<br/>56:1,2<br/><b>sign</b> 71:10<br/>118:18,19,20<br/><b>signature</b><br/>162:16<br/><b>significant</b> 47:2<br/>101:21 104:25<br/>111:25,25<br/>113:4 135:8,16<br/>135:19 148:13<br/><b>significantly</b><br/>86:13,13 113:1<br/>120:19 157:3<br/><b>similar</b> 95:9<br/>104:7,8 108:24<br/><b>simple</b> 65:4<br/>148:11,11<br/><b>simpler</b> 34:15<br/><b>simply</b> 42:22<br/>51:13 60:3<br/>63:22 128:9<br/><b>simultaneous</b><br/>161:11<br/><b>singh</b> 1:12 7:3<br/>8:16,20 11:5<br/>13:8,9 17:18</p> | <p>19:17 20:20,22<br/>20:23 66:25,25<br/>67:2 76:12,13<br/>77:2 84:25 85:2<br/>127:15 137:5,6<br/>152:8 154:10<br/>154:14,24<br/>160:2,25<br/>161:13<br/><b>singh's</b> 137:15<br/><b>single</b> 65:14<br/>110:7<br/><b>sir</b> 21:25 73:22<br/>77:24 85:15,16<br/>87:11 102:12<br/>106:8,16,18<br/>136:5,7 138:15<br/>138:16<br/><b>sit</b> 117:10<br/><b>sitting</b> 109:21<br/><b>six</b> 56:13,16<br/>69:21 93:13<br/><b>skip</b> 87:22<br/>92:20<br/><b>slaughtered</b><br/>148:25<br/><b>slemp</b> 87:24,24<br/>88:2,3,11,11<br/>89:12<br/><b>slice</b> 150:7<br/><b>smaller</b> 120:14<br/>132:16<br/><b>smart</b> 12:15<br/><b>smith</b> 67:24<br/>68:2,5,11,13,17<br/>68:19</p> | <p><b>snappy</b> 79:13<br/><b>solicitation</b><br/>81:22 82:13<br/>124:13<br/><b>solution</b> 58:14<br/><b>solvent</b> 136:18<br/><b>somebody</b><br/>56:22,24 70:23<br/>78:9 79:4 80:11<br/>145:25 148:10<br/><b>soon</b> 130:15<br/><b>sorry</b> 18:3 79:1<br/>88:19 90:23<br/>98:9 100:7<br/>111:15,21<br/>121:16 125:6<br/>127:1 147:13<br/><b>sorted</b> 23:21<br/><b>sorting</b> 144:25<br/><b>sought</b> 157:24<br/>159:4<br/><b>sound</b> 63:19<br/>112:16<br/><b>sounds</b> 44:10<br/>44:20<br/><b>speak</b> 14:15<br/>38:7 101:7<br/><b>speaking</b> 68:4<br/><b>specific</b> 10:23<br/>12:23 17:10<br/><b>specifically</b><br/>43:4 44:21<br/><b>spectrum</b> 12:25<br/>123:20<br/><b>speculate</b> 78:16</p> |
|---|---|--|--|



**[speculation - supervisory]**

Page 38

|   |   |                                     |  |
|---|---|-------------------------------------|--|
| <b>speculation</b><br>36:14             | <b>start</b> 4:9 7:2<br>8:19 20:8 86:10 | <b>stop</b> 9:19 38:19<br>90:23     | <b>submit</b> 49:1<br>131:23,23          |
| <b>speculative</b><br>78:11             | <b>started</b> 30:11<br>41:20 78:20,21  | <b>straight</b> 11:23               | 152:6 159:16                             |
| <b>spell</b> 21:24                      | 139:12                                  | <b>strategies</b> 54:25<br>69:21    | <b>submitted</b> 5:19<br>14:4 46:24 58:8 |
| <b>spend</b> 43:7<br>128:1              | <b>starting</b> 23:25                   | <b>strategy</b> 54:17               | 147:16 158:11                            |
| <b>spent</b> 16:21                      | <b>starts</b> 51:13<br>100:20           | <b>street</b> 2:9                   | 158:16 159:21                            |
| <b>spike</b> 113:15                     | <b>state</b> 12:7 51:11<br>52:23 53:4,5 | <b>strength</b> 135:18              | 161:3                                    |
| <b>spikes</b> 113:8                     | 89:2,19 162:5                           | <b>strengthen</b><br>94:21          | <b>submitting</b><br>159:6               |
| <b>spoken</b> 130:18<br>131:1           | 162:20                                  | <b>stretch</b> 53:22                | <b>subpoenaed</b><br>22:24               |
| <b>spreadsheet</b><br>23:21             | <b>stated</b> 83:7,21                   | <b>strict</b> 100:3                 | <b>substance</b> 31:4<br>128:3           |
| <b>spring</b> 99:14                     | <b>statement</b> 5:17<br>53:7 82:19,21  | <b>strong</b> 55:7                  | <b>substantive</b><br>11:14 28:3 31:2    |
| <b>squarely</b> 17:23<br>20:1 124:19    | 105:22                                  | <b>strongly</b> 156:5               | 161:3                                    |
| <b>squibb</b> 88:15                     | <b>statements</b> 15:1<br>48:9 57:13    | <b>structural</b><br>45:15 47:19    | <b>subtype</b> 105:13                    |
| <b>staff</b> 90:5,6                     | <b>states</b> 59:19<br>81:19 107:6,7,8  | 53:23 55:25                         | <b>subtypes</b> 105:8<br>120:3           |
| <b>stage</b> 104:14,15<br>104:16 123:10 | <b>stating</b> 82:7                     | 57:4 75:8,12                        | <b>suddenly</b><br>151:20 157:9          |
| 123:14,17                               | <b>stay</b> 107:23                      | 119:9                               | <b>suggest</b> 8:15<br>64:20             |
| <b>stand</b> 6:8 10:18<br>36:22 58:24   | <b>steering</b> 22:22<br>24:24 67:18    | <b>structure</b> 76:1<br>76:2 95:21 | <b>suggesting</b> 81:7                   |
| 126:22 151:15                           | <b>stenographic...</b><br>1:21          | <b>struggling</b><br>70:20          | <b>suggests</b> 72:15                    |
| 154:8 155:18                            | <b>step</b> 16:17<br>54:16 55:1         | <b>studies</b> 83:4                 | <b>sum</b> 128:3                         |
| 155:21 157:25                           | 97:13 151:11                            | <b>stuff</b> 30:24<br>40:17 79:9    | <b>summer</b> 84:6                       |
| 159:5,20                                | 152:22 153:17                           | 89:23 155:16                        | <b>super</b> 156:21                      |
| <b>standard</b> 67:14<br>89:2           | <b>stephen</b> 2:9                      | 156:21                              | <b>superior</b> 1:1                      |
| <b>standards</b><br>20:24               | <b>steps</b> 133:12                     | <b>subject</b> 135:21<br>147:12     | <b>supervise</b> 90:7                    |
| <b>standing</b> 33:4<br>73:11 116:1     | <b>steve</b> 4:21<br>121:3,13           | <b>subjected</b><br>5:25 6:13 7:11  | <b>supervising</b><br>90:16              |
| 139:3,6                                 | <b>stipulated</b><br>32:11              | 7:21 161:1,11                       | <b>supervisory</b><br>91:1               |
|   |   | <b>submissions</b><br>6:3           |  |

## [supplement - term]

Page 39

|                               |                             |                        |                              |
|-------------------------------|-----------------------------|------------------------|------------------------------|
| <b>supplement</b><br>136:17   | <b>switch</b> 114:20        | 160:10                 | 133:12 136:4                 |
| <b>supplemental</b><br>137:16 | <b>switching</b><br>115:19  | <b>takes</b> 10:18,19  | 148:21                       |
| <b>supplier</b> 98:21         | <b>sworn</b> 22:5           | <b>talc</b> 1:3 4:5,6  | <b>targeted</b> 149:25       |
| <b>suppliers</b> 98:22        | <b>synchronized</b><br>85:9 | 7:16 10:10 45:3        | <b>tcc</b> 35:8,11,12        |
| <b>support</b> 45:18          | <b>synthesize</b><br>127:18 | 45:7 54:24             | 52:14 71:10                  |
| 51:18,23,24                   | <b>system</b> 49:19         | 55:14 60:21            | 97:10                        |
| 53:3 54:20 55:7               | 51:2 57:5 58:15             | 62:1 68:6 70:9         | <b>tdp</b> 59:9              |
| <b>supported</b>              | 58:23 59:1                  | 71:14,16 72:7          | <b>team</b> 89:22,22         |
| 51:10 52:3,7,18               | 65:20 155:15                | 73:13 80:20,21         | 90:4 97:3                    |
| 52:21 83:3                    | <b>t</b>                    | 81:17 83:4,10          | 105:25 106:1                 |
| 96:12 105:5,8                 | <b>t</b> 3:10 87:8          | 86:19,23 89:23         | 108:23 116:13                |
| 114:2,7,19                    | 162:1,1                     | 90:9 99:8,23           | <b>teasing</b> 101:3         |
| 120:3                         | <b>table</b> 79:23          | 101:11,13,16           | <b>technically</b><br>112:22 |
| <b>supports</b> 54:24         | <b>tacks</b> 51:2           | 103:20 106:23          | <b>ted</b> 90:11 91:17       |
| <b>supposed</b> 18:24         | <b>tactic</b> 82:17         | 107:10,12              | 98:25                        |
| <b>supreme</b> 17:22          | <b>tag</b> 51:1             | 116:18 117:8           | <b>tell</b> 21:24 30:16      |
| 18:18,18 88:15                | <b>take</b> 10:12           | 118:21 134:10          | 74:18 77:21                  |
| 113:12                        | 13:25 23:20                 | 136:2 138:21           | 106:12,13                    |
| <b>sure</b> 6:15 7:2          | 36:25 43:12                 | 139:13 144:14          | 125:23 129:8                 |
| 15:23 27:25                   | 46:5 50:12                  | 151:2                  | <b>telling</b> 52:19         |
| 30:4,8 42:22                  | 64:13 66:4                  | <b>talk</b> 23:4 33:22 | 70:21 104:1,2                |
| 44:15 59:10,11                | 69:16 76:4,5                | 42:24 45:3             | 113:24                       |
| 60:4 61:2 62:14               | 80:10 84:25                 | 47:14 50:20            | <b>ten</b> 102:6             |
| 72:25 98:11                   | 85:2,4,10 118:3             | 62:7 112:5,6           | <b>tens</b> 123:17           |
| 101:5 107:24                  | 118:7 121:5                 | 118:13 119:12          | <b>term</b> 22:17            |
| 127:15,20                     | 122:7,8 128:12              | 119:12                 | 23:4,7 24:9                  |
| 140:12 141:25                 | 136:21,23                   | <b>talked</b> 10:21    | 25:11,19 26:18               |
| 146:13,17                     | 137:10,12                   | 11:24 16:18            | 27:4,7,12,13,14              |
| 159:23 160:7                  | 151:15 160:8                | 38:25 52:4,9,9         | 27:17,17,18                  |
| <b>surprising</b> 81:9        | <b>taken</b> 6:8 17:8       | 105:17 138:20          | 28:2,4,15,23,25              |
| <b>sustain</b> 69:24          | 23:8 85:11                  | 138:24 143:8           | 29:1,2,8 30:16               |
| <b>sustaining</b><br>84:20    | 133:1 137:24                | 144:7 145:3,13         | 31:5,7,8,11,15               |
|                               |                             | 150:6                  | 31:20,21,25                  |
|                               |                             | <b>talking</b> 16:19   | 32:1,3,4,18,22               |
|                               |                             | 16:20 50:22            | 33:10,15,23                  |
|                               |                             | 62:10 105:9,16         |                              |

[term - time]

Page 40

|   |  |  |  |
|---|--|--|--|
| 34:2,23 69:1<br>104:22 108:24<br>131:14,16<br>150:3<br><b>terms</b> 13:19<br>29:3 46:3 49:13<br>59:14,15 60:6<br>60:11,15 65:16<br>65:17 81:24<br>124:2<br><b>testified</b> 7:14<br>22:5 28:1 37:6<br>44:13 47:12<br>80:18,19 81:4,5<br>90:20 144:9<br>149:6<br><b>testify</b> 13:24<br>36:15,20<br><b>testifying</b> 41:20<br><b>testimony</b> 5:6,9<br>5:19 7:3 8:10<br>8:19,24 9:3<br>13:22 14:5<br>22:16 30:1,21<br>38:6 40:9 41:23<br>42:2,18 43:2,3<br>43:7 46:6 50:2<br>73:21 94:2 95:5<br>110:1 111:3,5<br>124:4,14 127:7<br>127:9,11<br>128:17 138:22<br>143:11 153:12<br>153:14 157:13<br>157:15 158:4<br>158:25 160:20 | <b>testing</b> 132:8<br><b>texas</b> 54:16<br>55:1 57:3 97:13<br>152:22 153:16<br><b>thank</b> 4:2,12,17<br>4:23 5:3 8:22<br>9:17,24 14:7,9<br>21:19,20 22:7<br>67:21 69:7<br>76:10,13,14<br>77:6,7,9,14,24<br>78:5 79:16<br>84:24 85:12<br>89:10 107:21<br>117:18 127:23<br>137:9,20,25<br>142:1,4 146:9<br>146:11 151:10<br>154:12 160:21<br>160:23 161:9<br>161:15,16,17<br><b>thanks</b> 38:21<br><b>thee</b> 151:19<br><b>theme</b> 13:7<br><b>theory</b> 124:11<br><b>thereof</b> 21:2<br><b>thing</b> 56:4 71:6<br>105:19,20<br>122:1 141:19<br>143:17,18<br>144:25 161:7<br><b>things</b> 7:14<br>10:8 13:11 45:3<br>81:6 90:17<br>93:13,16 112:6<br>124:2 144:7 | <b>think</b> 5:10 7:20<br>7:20,22 9:5<br>14:12 17:22<br>18:17 19:22<br>20:19 23:17<br>24:15 27:21<br>28:7 30:5 33:20<br>38:18,23 42:12<br>47:12 53:25<br>56:7 60:2 61:10<br>64:11,21 65:1,1<br>65:3,7 70:21<br>72:21 78:2<br>91:19,23 93:8<br>93:13,18,19<br>98:8,9,14,15,23<br>105:17 109:25<br>110:6,23 111:5<br>111:5,7 117:7,7<br>124:25 125:24<br>128:2,15,18<br>131:22 138:25<br>142:2 146:15<br>148:4,18 149:8<br>149:15 152:20<br>153:14,15,23<br>153:25 154:7<br>154:24 156:17<br>160:1<br><b>thinking</b> 20:15<br>74:23<br><b>third</b> 48:6<br>112:17,17<br>113:1,5 114:13<br>135:12,12,18 | <b>thought</b> 9:8<br>11:17 23:8<br>27:24 54:2 55:7<br>57:14 100:7<br>126:2 127:25<br>135:19<br><b>thoughts</b> 7:5<br>9:18 146:24<br>152:17 154:17<br>159:10<br><b>thousands</b><br>123:17<br><b>threat</b> 135:3<br><b>three</b> 6:7,7<br>28:11 29:15<br>32:24 69:11<br>81:22 87:13,13<br>88:7,8,8 139:1<br><b>threshold</b> 116:9<br><b>threw</b> 120:23<br><b>tied</b> 155:6<br><b>time</b> 9:1,19,23<br>10:19,22,23<br>11:23 12:21<br>13:20 15:10<br>21:22 23:25<br>25:23 30:22<br>33:23 34:1<br>35:25 37:12<br>43:8,9,20 47:23<br>47:25 52:15<br>53:18 54:16<br>57:2 78:18,18<br>78:19 79:20<br>80:21 85:7 86:3<br>91:3,22 95:22 |
|---|--|--|--|

[time - two]

Page 41

|                        |                        |                         |                        |
|------------------------|------------------------|-------------------------|------------------------|
| 95:22 98:13            | <b>told</b> 9:7 17:6,7 | <b>transcript</b> 1:6   | 139:18,21,25           |
| 99:10,17 100:7         | 19:6 34:16             | 3:13,14 6:14            | 141:2 156:16           |
| 100:18 102:3           | 49:22,22 50:3,8        | 9:7 16:11 30:24         | 162:8                  |
| 103:4 106:23           | 53:13,15 71:7          | 127:3 129:18            | <b>truly</b> 54:2 62:3 |
| 107:1 108:4            | 74:6 81:8              | 129:20 133:19           | 83:1 96:10             |
| 109:17 110:4,5         | <b>took</b> 44:8       | 134:4 147:3,5           | 123:2,23               |
| 120:8 121:18           | <b>top</b> 23:25 24:16 | 158:2 162:7,8           | <b>trupos</b> 16:20    |
| 123:5 124:19           | <b>topics</b> 120:21   | <b>transferred</b>      | <b>truth</b> 52:20     |
| 127:3 128:1            | <b>tort</b> 34:3 49:19 | 97:22                   | 79:13,14               |
| 129:19 132:20          | 51:2 54:16 55:3        | <b>transmission</b>     | <b>try</b> 9:9 18:15   |
| 134:17 145:22          | 57:5 58:15,23          | 27:11                   | 23:19 63:18            |
| 148:14                 | 59:1 65:20 90:1        | <b>transponder</b>      | 64:4,6 71:9            |
| <b>times</b> 5:5 92:13 | 90:2,5 99:1            | 77:12                   | 83:24 101:8,8          |
| 143:20                 | 100:1,4 111:20         | <b>traps</b> 75:15      | 121:16 149:1           |
| <b>timesheets</b> 5:25 | <b>torts</b> 44:7 45:8 | <b>treasurer</b> 46:2   | <b>trying</b> 12:17    |
| <b>timing</b> 34:6     | 45:22 83:16            | <b>treating</b> 123:16  | 34:3,5,5 38:11         |
| 103:13                 | 91:5                   | <b>trial</b> 11:15 87:4 | 38:11 41:14            |
| <b>tire</b> 88:21      | <b>toss</b> 80:16      | 87:5 88:3,12,12         | 45:17 63:22,25         |
| <b>title</b> 89:24     | <b>tossed</b> 80:14    | 88:24 135:11            | 64:20 74:19            |
| <b>titled</b> 54:15,23 | <b>total</b> 46:16,20  | 140:22                  | 78:8 98:1 104:3        |
| <b>today</b> 8:24 10:4 | 46:23 47:1 51:1        | <b>trials</b> 88:22     | 128:16 140:12          |
| 12:13 15:5 20:3        | 59:21,22 61:19         | 89:1 90:22,24           | 149:4                  |
| 21:22 84:11            | 96:15,23               | 94:22,23                | <b>tube</b> 105:10     |
| 94:7 109:21            | 101:22 102:8,9         | 138:21,21               | <b>tune</b> 64:25      |
| 120:21 121:15          | 106:6,9 112:1,6        | 139:9                   | <b>turn</b> 20:19      |
| 124:25 126:23          | 112:7 113:15           | <b>tried</b> 5:16 89:13 | 54:19 82:18            |
| 146:21 149:9           | 120:15,16,18           | 90:10,12,12             | 142:8                  |
| <b>today's</b> 13:20   | 123:1 132:2,9          | 94:22 139:13            | <b>twice</b> 41:1      |
| <b>together</b> 5:5    | 132:14                 | 140:2,20                | <b>two</b> 5:10 6:20   |
| 6:20 29:13 45:2        | <b>touch</b> 77:22     | 142:13 148:9            | 24:13 26:22            |
| 47:6 71:9 76:1         | <b>toward</b> 37:23    | 153:24                  | 31:12 54:16            |
| 76:1 95:21             | 37:23 52:8 96:1        | <b>true</b> 37:3 39:23  | 55:1 56:17             |
| 108:22,23              | <b>train</b> 100:7     | 47:3 48:1 51:15         | 57:18 65:4,4           |
| 109:3                  | <b>trans</b> 129:18    | 54:22 57:1 59:4         | 84:18 97:13            |
| <b>toggle</b> 37:6     | <b>transcribed</b>     | 101:23 108:9            | 107:5,6 108:16         |
| 38:25 49:5             | 1:21                   | 120:19 139:6            | 112:6 118:5            |

[two - violation]

Page 42

|   |   |   |  |
|---|---|---|--|
| 129:2 130:23<br>133:3,4 142:14<br>149:16 152:22<br>153:17,22<br>161:11<br><b>twombly</b> 88:21<br><b>type</b> 30:24 95:9<br>96:18 104:7<br>105:7<br><b>types</b> 93:6<br>100:25 114:1,9<br><b>typically</b> 17:4<br>66:11,12  | <b>understand</b><br>6:13 9:24 10:25<br>12:12 15:13<br>16:1,6 18:7<br>39:15,18 64:13<br>67:8 68:13 79:7<br>82:1 124:24<br>126:14 143:4,7<br><b>understandably</b><br>20:15<br><b>understanding</b><br>9:1 61:9 73:5<br>94:15 96:9,14<br>103:1,9 116:14<br>118:9 119:11<br><b>understands</b><br>78:15 148:4<br>154:3,4<br><b>understood</b><br>8:23 30:21<br>48:20 100:24<br>118:11<br><b>unfair</b> 155:4,11<br><b>unfamiliar</b> 60:6<br><b>unfortunately</b><br>17:9<br><b>united</b> 81:19<br>84:2<br><b>universe</b> 96:16<br>119:20,20<br>120:15 132:15<br><b>unreasonable</b><br>40:19<br><b>unreasonably</b><br>114:17 136:23 | <b>unredacted</b><br>153:24<br><b>upper</b> 59:17<br><b>ups</b> 33:13<br><b>urged</b> 97:23<br><b>urging</b> 84:2<br><b>use</b> 23:19 30:23<br>39:15<br><b>used</b> 129:15<br>146:21<br><b>using</b> 16:15<br>85:8 146:14<br><b>usually</b> 17:1<br><b>uterine</b> 114:8  | 136:24 145:6,9<br>146:2 150:23<br><b>van</b> 117:16<br><b>variations</b><br>33:11<br><b>various</b> 52:10<br><b>vast</b> 68:8<br><b>vegas</b> 44:8,14<br><b>vehemently</b><br>17:21<br><b>vein</b> 10:4<br><b>vendor</b> 70:12<br><b>verdict</b> 87:3,6<br>87:14,15,15<br>88:4,11,13<br><b>verdicts</b> 87:13<br>88:8,9,14,16<br>113:11 138:25<br>139:5,9<br><b>verify</b> 54:13<br><b>version</b> 26:22<br>31:24,25 32:1,2<br>34:23 37:4<br>44:19 153:24<br>154:6<br><b>versions</b> 32:18<br><b>versus</b> 112:7<br><b>viability</b> 58:7<br><b>vice</b> 2:14<br><b>victim</b> 119:25<br><b>view</b> 12:24<br>91:22 92:2,2,3<br>92:16 94:20<br>143:25,25<br><b>violation</b> 17:1<br>17:16,19 63:3 |
| <b>u</b>  |   |   |  |
| <b>u</b> 87:8<br><b>u.s.</b> 1:13<br><b>uh</b> 130:3<br><b>unbeknownst</b><br>15:11<br><b>uncertainty</b><br>118:23<br><b>uncommon</b><br>104:6<br><b>under</b> 11:17<br>17:25 46:25<br>59:18 67:4<br>79:22 82:14<br>83:16 85:15<br>89:2 109:16<br>138:15 153:5<br>155:7,7 156:16<br>161:5<br><b>underlying</b><br>16:4 |   | <b>v</b>  |  |
|   |   | <b>v</b> 116:17 144:17<br><b>vacate</b> 139:8<br><b>vacated</b> 88:14<br>88:16 139:9<br><b>vaginal</b> 114:9<br><b>vague</b> 46:17,18<br>46:19<br><b>value</b> 93:6<br>101:18 102:1,1<br>119:15,17,20<br>123:21 132:2<br>132:11 136:19<br>148:16,17,18<br>149:5<br><b>values</b> 40:19<br>46:14 100:9<br>108:7,8,8<br>114:18 119:12<br>122:12 123:3<br>136:13,15,20 |  |

## [violations - witness]

Page 43

|                         |                       |                      |                        |
|-------------------------|-----------------------|----------------------|------------------------|
| <b>violations</b> 21:16 | 39:4,5,5,24           | 80:3,7 81:10         | <b>welcome</b> 14:8    |
| <b>violative</b> 6:17   | 40:21 43:7            | 84:7 92:20           | 160:24 161:18          |
| <b>vioxx</b> 92:9       | 49:14 64:24           | 104:4,10             | <b>went</b> 10:2       |
| 104:9                   | 65:11 71:12,12        | 117:12 121:16        | 29:21 73:14            |
| <b>vis</b> 91:24,24     | 77:4 83:20,21         | 124:16 133:13        | <b>west</b> 156:2      |
| <b>vision</b> 58:13     | 83:24 84:25           | 149:2 156:8          | <b>whatsoever</b>      |
| <b>visit</b> 112:25     | 94:3 102:24           | <b>ways</b> 107:14   | 13:4                   |
| <b>volume</b> 1:7       | 107:23 108:4          | 133:25               | <b>whistle</b> 82:16   |
| <b>voluntarily</b>      | 112:4,4 124:6         | <b>we've</b> 5:5,7,7 | <b>white</b> 117:17    |
| 49:14 116:6             | 124:24 128:1          | 69:18 71:11,11       | <b>wide</b> 2:14 119:1 |
| <b>vote</b> 35:15,17    | 128:11 143:17         | 97:11,12 104:6       | <b>willing</b> 31:3,9  |
| 36:11 39:22,25          | 143:18 146:16         | 113:18 122:3         | 33:14 42:4             |
| 40:15,15,22,23          | 146:16 152:3          | 149:19,21            | 47:14 100:17           |
| 41:10 81:24             | 152:10 153:6          | 155:14               | <b>willingly</b> 79:21 |
| 82:13,25                | <b>wanted</b> 6:10    | <b>weaknesses</b>    | <b>willingness</b>     |
| 114:15,16,16            | 35:2 36:4,14          | 94:21                | 41:21 42:24            |
| <b>voted</b> 36:6       | 39:2,7,21 40:23       | <b>weapon</b> 38:16  | 43:8                   |
| <b>voting</b> 40:2,12   | 57:13,15 58:2         | <b>wednesday</b>     | <b>win</b> 54:1,1,4    |
| <b>w</b>                | 65:7,9 76:16          | 81:13 82:3,6         | 58:14,14,17,20         |
| <b>wait</b> 85:21       | 79:2 80:12            | 122:16               | 58:20                  |
| 155:17 158:1            | 107:22,23,24          | <b>week</b> 14:13,20 | <b>wise</b> 42:17      |
| <b>waived</b> 153:8     | <b>wants</b> 7:23 8:1 | 15:18 152:12         | <b>wish</b> 7:24       |
| <b>waiver</b> 70:25     | 8:7 15:16 19:23       | <b>week's</b> 19:10  | <b>withheld</b> 152:3  |
| 153:6,15,20             | 37:18 79:7,12         | <b>weeks</b> 26:22   | <b>witness</b> 3:3     |
| 154:4 159:8,17          | 79:12 84:8 93:8       | 29:15 31:12          | 22:1 28:1 33:4         |
| 159:18                  | <b>washington</b>     | 56:17 57:8           | 35:24 36:18            |
| <b>walk</b> 86:17 93:4  | 2:10                  | 161:11               | 38:9 40:11,14          |
| 103:17                  | <b>waste</b> 10:22    | <b>weigh</b> 89:2    | 41:5 42:19             |
| <b>want</b> 5:12,22     | <b>watch</b> 9:19     | 101:25               | 43:15,18,23            |
| 6:1,2,12,22,22          | <b>way</b> 5:12 8:17  | <b>weight</b> 8:2    | 46:22 48:23            |
| 9:24 10:22 18:7         | 17:22 19:13           | 158:18,21            | 55:19,22 58:20         |
| 18:12,16,22             | 20:16 34:15           | 159:24 160:14        | 66:2 71:19,24          |
| 19:9 31:7 33:15         | 39:11 45:21           | 160:17               | 72:1,10 73:22          |
| 35:14,16,20             | 49:6 53:18 54:3       | <b>weighted</b>      | 74:4,9,12,20           |
| 36:10 37:16             | 58:1 66:11            | 123:19               | 75:4,22 78:17          |
|                         | 73:25 79:12           |                      | 79:20 85:16            |

[witness - zero]

Page 44

|  |   |   |
|--|---|---|
| 89:6,11 98:11<br>106:8,11,16,18<br>128:23 129:1<br>138:16 140:16<br><b>witnesses</b> 6:7,8<br><b>wolfson</b> 60:19<br>91:10 95:3,7<br><b>wonderful</b><br>63:23<br><b>word</b> 39:16<br>152:19,19,24<br><b>words</b> 30:23<br><b>work</b> 5:16<br>46:15,20 47:3<br>52:12 66:12<br>70:9,18,24<br>71:16 72:25<br>75:13,21 97:14<br>104:5,10,20<br>105:15 116:22<br>116:23 151:3<br><b>worked</b> 71:8<br>74:23 96:20<br>99:23 120:7<br>156:21<br><b>working</b> 29:11<br>29:11 37:23,23<br>52:8,14 55:23<br>56:13 63:5 71:5<br>71:9 95:22<br>100:8<br><b>works</b> 89:22<br>124:16 146:25<br><b>world</b> 2:14 12:6<br>15:25,25<br>112:24 133:24 | 134:7<br><b>worldwide</b><br>55:11<br><b>worried</b> 103:13<br><b>worries</b> 157:6<br><b>worth</b> 47:7<br>118:7<br><b>wrap</b> 65:3,14<br>81:11<br><b>wrapping</b> 21:5<br><b>write</b> 20:3<br><b>written</b> 53:1<br>54:10<br><b>wrong</b> 121:21<br>149:20<br><b>wrote</b> 25:7<br>52:20 54:11<br>57:3 | 69:21 80:1,1<br>84:12 88:6<br>107:15 132:12<br>142:15<br><b>years</b> 16:14,15<br>16:18,22,22<br>17:3 19:4 52:7<br>83:3 102:6<br>104:16 109:4<br>113:24 122:19<br>123:15 129:15<br>135:5 150:5<br><b>yesterday</b> 10:1<br>12:20<br><b>younger</b> 123:10<br><b>yuna</b> 6:5 16:20<br>86:14 156:16<br>157:5<br><b>yup</b> 20:11 |
|  | <b>x</b>  | <b>z</b>  |
|  | <b>x</b> 3:10 65:8<br>74:14,24 75:1   | <b>z</b> 74:15,24 75:2  |
|  | <b>y</b>  | <b>zero</b> 11:25<br>63:16 148:16   |
|  | <b>y</b> 65:9 74:14,24<br>75:1<br><b>yeah</b> 28:21 47:5<br>48:3,4 53:14<br>55:5 85:2 99:24<br>112:17 125:25<br>127:24 141:20<br>142:2 147:25<br><b>year</b> 15:11<br>16:19 24:1<br>34:18 41:21<br>43:1,10 44:6,18<br>45:8,22 50:7  |   |



New Jersey Rules Governing Civil Practice

Part IV, Rule 4:14

Depositions Upon Oral Examination

4:14-5. Submission to Witness; Changes; Signing

If the officer at the taking of the deposition is a certified shorthand reporter, the witness shall not sign the deposition. If the officer is not a certified shorthand reporter, then unless reading and signing of the deposition are waived by stipulation of the parties, the officer shall request the deponent to appear at a stated time for the purpose of reading and signing it. At that time or at such later time as the officer and witness agree upon, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, and any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness fails to appear at the time stated or if the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness' failure or



refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under R. 4:16-4(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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